

COUNCIL DOCKET OF

Nov 17, 2008☐ Supplemental ☒ Adoption ☐ Consent ☐ Unanimous Consent Rules Committee Consultant Review

R -

O -

Awarding of Design Build – Pump Station 1 and Pump Station 2 Electrical Upgrade and New Building at Pump Station 2

☒ Reviewed ☐ Initiated By NR&C On 9/10/08 Item No. 3c

## RECOMMENDATION TO:

Move to the full City Council without a recommendation, and direct staff to provide a report addressing how the City is going to deal with Bergelectric Corporation not meeting the City's Equal Opportunity Contracting policy, and also address what recourse the City has if Bergelectric Corporation does not meet this policy after the contract is awarded.

VOTED YEA: Frye, Faulconer, Peters

VOTED NAY:

NOT PRESENT: Atkins

CITY CLERK: Please reference the following reports on the City Council Docket:

REPORT TO THE CITY COUNCIL NO.

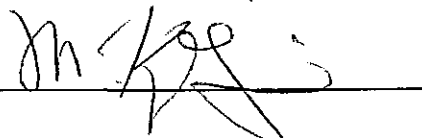
INDEPENDENT BUDGET ANALYST NO.

COUNCIL COMMITTEE CONSULTANT ANALYSIS NO.

OTHER:

Engineering and Capital Projects Department's September 3, 2008, Executive Summary Sheet

COUNCIL COMMITTEE CONSULTANT



**EXECUTIVE SUMMARY SHEET**  
CITY OF SAN DIEGO

DATE ISSUED: September 3, 2008      REPORT NO:  
ATTENTION: Natural Resources and Culture Committee  
Agenda of September 10, 2008  
ORIGINATING DEPARTMENT: Engineering and Capital Projects, Architectural Engineering  
and Parks Division  
SUBJECT: Awarding of Design Build – Pump Station 1 and Pump  
Station 2 Electrical Upgrade and New Building at Pump  
Station 2  
COUNCIL DISTRICT(S): 8 (Hueso) and 2 (Faulconer)  
CONTACT/PHONE NUMBER: Darren Greenhalgh (619)533-6600  
Hossein Azar (619)533-4102  
Chisti Dadachanji (619)533-4648

REQUESTED ACTION: Council authorization to award a contract for the design and construction of Design/Build Project of Pump Station 1 and Pump Station 2 Electrical Upgrade and New Building at Pump Station 2 to Bergelectric Corporation.

STAFF RECOMMENDATION: Adopt the Ordinance.

EXECUTIVE SUMMARY: A Power Reliability Study was conducted in 2003 to evaluate the electrical systems at Pump Station 1 and Pump Station 2, the two largest and the most critical pump stations in the Metropolitan Sewerage System. In this study, deficiencies with regards to compliance with current National Electric Code as well as Environmental Protection Agency (EPA) guidelines for Waste Water Treatment Facilities were evaluated. This project has evolved from the recommendations made to improve the overall power reliability of the entire electrical distribution system for these two pump stations.

Pump Station 1 auxiliary electrical distribution system utilizes the original installed hardware that was built in 1963 which does not provide automatic emergency transfer function from one utility feed to another if one of the utility feed fails. This project will replace the original electrical equipment with new equipment which would have the capability of providing automatic emergency transfer and eliminating single point failures. This capability is required by current EPA guidelines.

Pump Station 2 was also built in 1963. Numerous additions and modifications to the electrical system over the past 45 years have resulted in a very complicated system. Due to the age and lack of availability of the spare parts the original 1963 installed Main Switchgear will be replaced with new equipment which could accommodate a future new service from SDG&E and also accept the addition of on site emergency generator.

This electrical upgrade will add a higher degree of reliability to the San Diego Metropolitan Wastewater System by ensuring reliable operations of the pump stations during on site distribution outages or component failures and would go a long way in preventing costly sewer spills.

EQUAL OPPORTUNITY CONTRACTING:

Funding Agency City of San Diego

Sub consultant Participation:	\$110,566.00	Certified Firms (1.35%)
	\$3,813,607.00	Other Participation (46.52%)

Other Workforce Report Submitted: Staff will monitor plan and Adherence to Nondiscrimination Ordinance.

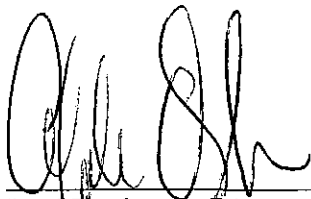
FISCAL CONSIDERATIONS: The total cost of this project is \$9,935,000. Funding of \$9,935,000 will be available in the Enterprise Fund, CIP 41-931.6, Pump Station 1 and Pump Station 2 Electrical Upgrade and New Building at Pump Station 2, Fund 41509, Sewer, for this purpose. \$9,535,000 will be transferred from CIP 41-926.0, Annual Allocation – Metropolitan System Pump Stations because this project was originally budgeted as a sublet under this Annual Allocation. The total estimated costs of this project are over \$8,000,000, so it is being converted to a stand alone project. No future funding is anticipated for this project.

The project costs of \$ 9,935,000 may be reimbursed approximately 80% by current or future debt financing.

PREVIOUS COUNCIL and/or COMMITTEE ACTION: Metro TAC Committee (8/20/08) has voted to approve the project. The subject item will be presented to Metro Commission on 9/11/08 and the Committee on Natural Resources and Culture on 9/10/08.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: Not applicable.

KEY STAKEHOLDERS AND PROJECTED IMPACTS: The key stakeholders are the City of San Diego and Bergelectric Corporation.

Patti Boekamp, Director  
Engineering and Capital Projects DepartmentDavid Jarell  
Deputy Chief of Public Works



## THE CITY OF SAN DIEGO

## M E M O R A N D U M

DATE: September 14, 2008

TO: Honorable Councilmember Donna Frye, District 6

FROM: Jose Luis Romo, Contract Compliance Officer, Equal Opportunity Contracting  
via Beryl Rayford, Program Manager, Equal Opportunity Contracting

SUBJECT: Concerns expressed during September 10, 2008 NR&C Committee meeting

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Dear Councilmember Frye,

This memorandum is to address concerns expressed during the September 10, 2008, Natural Resources and Culture Council Committee meeting regarding Item 3.C, Award of Design Build Contract Pump Station 1 and Pump Station 2 Electrical Upgrade, New Pump Station 2. The request is to authorize award of the contract to Bergelectric Corp. for an amount of \$8,197,000.00 for Design Build Services.

The following information addresses the process that Equal Opportunity Contracting has in place and that were followed as Standard Operating Procedure.

- Equal Opportunity Contracting was a selection panel participant during the design build selection process for this project.
- As this is a Design Build project, there is a voluntary 20% subconsultant/subcontractor participation goal. Bergelectric Corp. identified 47.87% subconsultant/subcontractor participation.
- Equal Opportunity Contracting conducted an analysis of the work force report for Bergelectric Corp., and noted that the analysis reflects under representation, therefore, an Equal Opportunity Plan was requested.
- The Equal Opportunity Plan is due to the City's Equal Opportunity Contracting Program within 30 days. The EO Plan must identify that it complies with the Office of Federal Contract Compliance Program sixteen point plan.
- Equal Opportunity Contracting will respond in writing with the results of the EO Plan review, and will address any violations and corrective actions necessary, if needed.

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Honorable Councilmember Donna Frye, District 6

September 14, 2008

- If the identified violations are not resolved within a year, Equal Opportunity Contracting informs the company that the violations may be resolved with an acceptable Letter of Commitment or a Conciliation Agreement, as appropriate.
- If no violations were found during the Equal Opportunity Plan review, the Contract Compliance Officer sends an Equal Opportunity Plan Approved letter to the company.

In the case of Bergelectric Corp, Equal Opportunity Contracting requested an Equal Opportunity Plan due to the identified under representations, the Plan is due on October 9, 2008, and depending on the results of the review, which steps will be taken.

Jose Luis Romo

Contract Compliance Officer

JLR

Attachment: Equal Opportunity Plan Requirement List

cc: Honorable Councilmember Kevin Faulconer, District 2  
Honorable Councilmember Scott Peters, District 1  
Honorable Councilmember Toni Atkins, District 3  
Mary Ann Kempczenski, NR&C Council Committee Consultant  
Debra Fischle-Faulk, Director of Administration  
Beryl Rayford, Equal Opportunity Contracting, Program Manager



## THE CITY OF SAN DIEGO

September 24, 2008

Robert M. Shaw  
Bergelectric Corporation  
650 Opper Street  
Escondido, CA 92029

Dear Mr. Shaw:

Subject: Equal Employment Opportunity (EEO) Plan Approval

This office has reviewed your firm's equal employment opportunity policies and practices and has determined the following:

Subject to the commitments detailed in your Equal Employment Opportunity (EEO) Plan, it is the determination of this office that your Plan meets the requirements of the City's Equal Opportunity Contracting Program and is hereby approved.

Your Plan will be maintained in this office and will be reviewed each time your firm seeks a contract with the City of San Diego. Although under representations were noted within your work force, your Plan is approved because the equal employment policies and practices and outreach efforts described in your Plan are expected to remedy the deficiencies in your work force. Be advised that this office will review and compare this EEO Plan with future work force reports and EEO Plans to determine if progress has been made in correcting those under representations.

The City of San Diego appreciates your cooperation in our mutual efforts to secure equal employment opportunities to all, including people of color and women.

If you have any questions, please feel free to contact me at (619) 235-5780.

Sincerely,

Jose Luis Romo  
Contract Compliance Officer

JLR

**Equal Opportunity Contracting Program**

1200 Third Avenue, Suite 200 • San Diego, CA 92101  
Tel (619) 235-5785 Fax (619) 235-5209

**000165****DOCKET SUPPORTING INFORMATION  
CITY OF SAN DIEGO****DATE:****EQUAL OPPORTUNITY CONTRACTING PROGRAM EVALUATION**

September 8, 2008

**SUBJECT:** Design/Build Services for Pump Station 1 and Pump Station 2**GENERAL CONTRACT INFORMATION**

Recommended Consultant: Bergelectric Corp.  
Amount of this Action: \$9,935,000.00  
Contract Amount: \$8,197,000.00  
Funding Source: City

**SUBCONSULTANT PARTICIPATION**

Staneck Construction (Other)	\$1,175,000.00	14.33%
Carollo Engineers (Other)	\$ 770,732.00	9.40%
Emerson Process Management (Other)	\$ 32,000.00	0.39%
MBN Architects (Other)	\$ 48,875.00	0.60%
Simon Wong Engineering (MBE/Asian Pacific Male)	\$ 61,666.00	0.75%
Allied Geotechnical Engineers (DBE/Asian Pacific Male)	\$ 41,900.00	0.51%
Alliance Consulting Engineers (DBE/Caucasian Female)	\$ 7,000.00	0.09%
One Source Distributors (Other)	\$1,787,000.00	21.80%
<b>Total Certified Participation</b>	<b>\$ 110,566.00</b>	<b>1.35%</b>
<b>Total Other Participation</b>	<b>\$3,813,607.00</b>	<b>46.52%</b>
<b>Total Subconsultant Participation</b>	<b>\$3,924,173.00</b>	<b>47.87%</b>

**EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE**

Equal Opportunity: Required

Bergelectric Corp. submitted a Work Force Report for their San Diego County employees dated August 6, 2008, with a total of 2,528 employees. The firm's Work Force Analysis reflects under representations in the following categories:

Blacks in Mgmt & Financial, Administrative Support and Transportation  
Hispanics in Mgmt & Financial  
Asians in Mgmt & Financial, Administrative Support and Electricians  
Filipinos in Mgmt & Financial, Administrative Support and Electricians  
Females in Mgmt & Financial, Sales, Transportation, Laborers and Electricians

EOC staff is concerned about the under representations in the firm's workforce report and therefore, has requested an Equal Opportunity Plan and will continue to monitor the firm's effort to implement their plans.

This agreement is subject to the City's Equal Opportunity Contracting (San Diego Ordinance No. 18173, Section 22.2701 through 22.2702) and Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517)

**ADDITIONAL COMMENTS**

The *Work Force Analyses* are attached.

JLR

File: Admin WOFO 2000

Date WOFO Submitted: 8/6/2008

Input by: LAD

Goals reflect statistical labor force

availability for the following:

San Diego, CA

2000 CLFA

City of San Diego/Equal Opportunity Contracting  
**WORK FORCE ANALYSIS REPORT**

FOR

Company: *Bergelectric Corporation***I. TOTAL WORK FORCE:**

	Black			Hispanic			Asian			American Indian			Filipino			White			Other		
	CLFA Goals	M	F	CLFA Goals	M	F	CLFA Goals	M	F	CLFA Goals	M	F	CLFA Goals	M	F	M	F	M	F		
Mgmt & Financial	3.3%	1	1	11.9%	11	1	6.2%	2	1	0.4%	0	0	6.2%	0	0	152	19	2	1		
Professional	4.0%	140	11	12.6%	787	15	6.5%	67	6	0.5%	28	4	6.5%	0	0	1160	21	28	0		
A&E, Science, Computer	2.8%	0	0	7.3%	0	0	16.2%	0	0	0.3%	0	0	16.2%	0	0	1	0	0	0		
Technical	6.6%	0	0	14.8%	0	0	17.2%	0	0	0.4%	0	0	17.2%	0	0	0	0	0	0		
Sales	3.9%	0	0	19.5%	0	0	6.8%	0	0	0.6%	0	0	6.8%	0	0	3	0	0	0		
Administrative Support	7.0%	0	1	20.8%	0	13	8.8%	0	1	0.6%	0	1	8.8%	0	0	0	19	0	1		
Services	5.5%	0	0	36.9%	0	0	9.7%	0	0	0.6%	0	0	9.7%	0	0	0	0	0	0		
Crafts	4.5%	0	0	25.8%	0	0	9.1%	0	0	0.7%	0	0	9.1%	0	0	0	0	0	0		
Operative Workers	4.3%	0	0	38.8%	0	0	20.8%	0	0	0.3%	0	0	20.8%	0	0	0	0	0	0		
Transportation	8.1%	0	0	32.1%	5	0	4.5%	0	0	0.5%	0	0	4.5%	0	0	10	0	2	0		
Laborers	4.4%	0	0	54.0%	12	0	4.1%	1	0	0.5%	0	0	4.1%	0	0	2	0	0	0		
TOTAL		141	13		815	29		70	8		26	5		0	0		1328	59	32	2	

**HOW TO READ TOTAL WORK FORCE SECTION:**

The information blocks in Section I (Total Work Force) identify the absolute number of the firm's employees. Each employee is listed in their respective ethnic/gender and employment category. The percentages listed under the heading of "CLFA Goals" are the County Labor Force Availability goals for each employment and ethnic/gender category.

Mgmt & Financial  
Professional  
A&E, Science, Computer  
Technical  
Sales  
Administrative Support  
Services  
Crafts  
Operative Workers  
Transportation  
Laborers

TOTAL EMPLOYEES		
ALL	M	F
191	168	23
2265	2208	57
1	1	0
0	0	0
3	3	0
36	0	36
0	0	0
0	0	0
0	0	0
17	17	0
15	15	0

Female  
Goals  
39.8%  
59.5%  
22.3%  
49.0%  
49.4%  
73.2%  
62.3%  
8.6%  
36.7%  
15.2%  
11.1%

**HOW TO READ EMPLOYMENT ANALYSIS SECTION:**

The percentages listed in the goals column are calculated by multiplying the CLFA goals by the number of employees in that job category. The number in that column represents the percentage of each protected group that should be employed by the firm to meet the CLFA goal. A negative number will be shown in the discrepancy column for each underrepresented goal of at least 1.00 position.

**II. EMPLOYMENT ANALYSIS****TOTAL**

2528	2412	116
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	Black			Hispanic			Asian			American Indian			Filipino			Female		
	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy
Mgmt & Financial	6.30	2	(4.30)	22.73	12	(10.73)	11.84	3	(8.84)	0.76	0	N/A	11.84	0	(11.84)	76.02	23	(53.02)
Professional	90.60	151	60.40	285.39	802	516.61	147.23	73	(74.23)	11.33	30	18.68	147.23	0	(147.23)	1347.68	57	(1290.68)
A&E, Science, Computer	0.03	0	N/A	0.07	0	N/A	0.16	0	N/A	0.00	0	N/A	0.16	0	N/A	0.22	0	N/A
Technical	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Sales	0.12	0	N/A	0.59	0	N/A	0.20	0	N/A	0.02	0	N/A	0.20	0	N/A	1.48	0	(1.48)
Administrative Support	2.52	1	(1.52)	7.49	13	5.51	3.17	1	(2.17)	0.22	1	N/A	3.17	0	(3.17)	26.35	38	9.65
Services	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Crafts	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Operative Workers	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Transportation	1.38	0	(1.38)	5.46	5	N/A	0.77	0	N/A	0.09	0	N/A	0.77	0	N/A	2.58	0	(2.58)
Laborers	0.66	0	N/A	6.10	12	3.90	0.62	1	N/A	0.08	0	N/A	0.62	0	N/A	1.67	0	(1.67)

Goals are set by job categories for each protected group. An underrepresentation is indicated by a negative number, but if the DISCREPANCY is less than -1.00 position, a N/A will be displayed to show there is no underrepresentation.

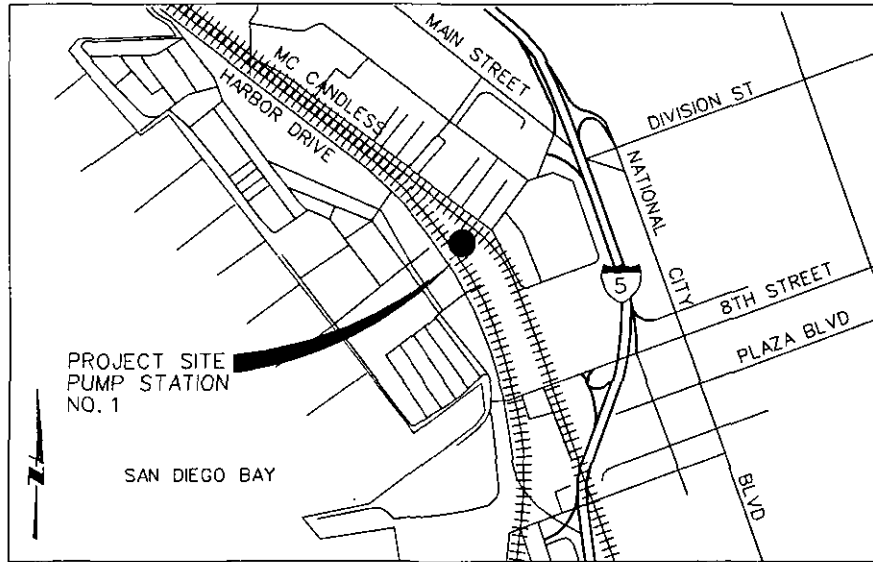


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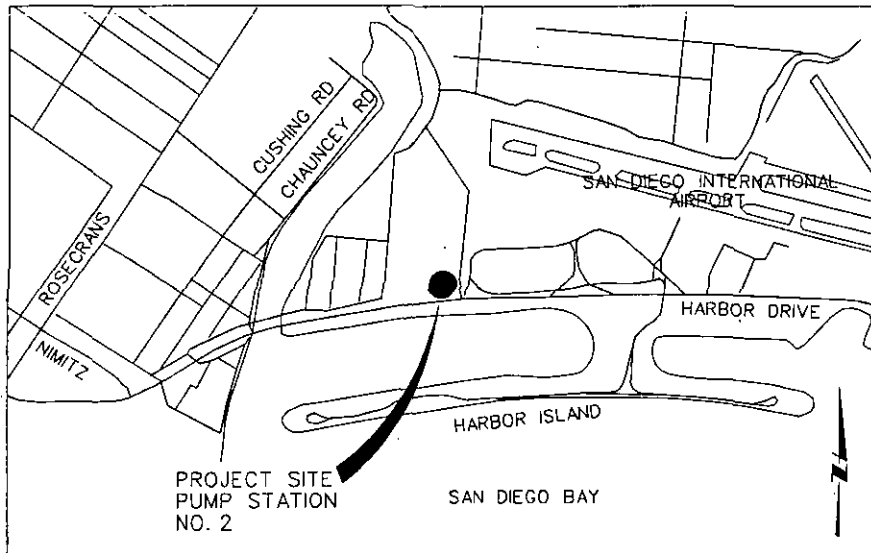
## OWNERSHIP INFORMATION

**SUBJECT -** Pump Stations 1 & 2 Electrical Upgrade and new Electrical Building at Pump Station 2

Subject	Name of Firm	Ownership Information
Pump Stations 1 & 2 Electrical Upgrade and new Electrical Building at Pump Station 2	Bergelectric Corporation	J.R. Briscoe - CEO/Secretary Don Briscoe - President Tom Anderson - Executive Vice President Alan Mashburn - Senior Vice President William Wingerning - Senior Vice President Ken Bertalan - Senior Vice President Privately held



LOCATION MAP  
PUMP STATION NO. 1



LOCATION MAP  
PUMP STATION NO. 2

**EXHIBIT P****SCOPE OF WORK**

The Scope of Work under this contract includes all work, materials, equipment, and labor, but is not necessarily limited to, the following:

1. Construction of new two story building at Pump Station 2
2. Furnish and install electrical switchgears, unit substations, motor starters, MCCs, distribution and lighting panels, standby generator, and other equipment per Specifications and Contract Drawings.
3. Furnish and install all electrical conduit, wiring, cables and appurtenances as per Specifications and Contract Drawings.
4. Coordinate with Electric Utility and provide temporary standby power as necessary for successful implementation of the various phases of the project without interruption of the pump station operation.
5. Integrate new switchgear auto throwover control system with Pump Station 2 existing DCS system per specification and contract drawings.

The Design/Builder shall provide management, obtain all permits, design drawings, shop drawings, documents, labor, materials, supplies, parts (to include system components), transportation, plant supervision, testing and equipment needed to complete the Work.

000174

## EXHIBIT D

## SCHEDULE OF FEE PAYMENTS

Total compensation paid to Bergelectric Corporation by the City for all work performed under this Agreement and its Exhibits, including Allowances shall not exceed Eight Million, One Hundred and Ninety Seven Thousand Dollars (\$8,197,000) for the two (2) years duration of this Agreement. The duration starts from the issuance of Notice To Proceed. This not-to exceed amount includes any Federal, State or Local sales taxes.

Schedule of prices for the DESIGN/BUILD of "PS1 and PS2 Electrical Upgrade Project and New Building at PS2 Project" in accordance with the the Contract Documents.

LUMP SUM ITEM					
Item No.	Description	Quantity	Unit	Unit Price	Amount
1	Engineering and Design Services	Lump Sum	N/A	N/A	\$1,550,000
2	General Construction/Building	Lump Sum	N/A	N/A	\$2,290,000
3	Electrical Construction other than Building	Lump Sum	N/A	N/A	\$3,612,000
ALLOWANCE ITEMS					
Note: Payment of the allowance items will be based on actual expenditure in accordance with the Contract Documents.					
Item No.	Description	Quantity	Unit	Unit Price	Amount
4	Allowance for partnering	L.S.	N/A	N/A	\$20,000
5	Allowance for <u>Unknown Utilities</u>	L.S.	N/A	N/A	\$25,000
6	Allowance for Field Orders	L.S.	N/A	N/A	\$400,000
7	Allowance for San Diego Gas & Electric Services	L.S.	N/A	N/A	\$300,000
TOTAL FOR PROPOSAL (ITEMS 1 THROUGH 7 INCLUSIVE)					\$8,197,000.00

000175

## PROJECT COST ESTIMATE

PS1 and PS2 Electrical Upgrade  
and New Building at PS2 ProjectAgreement  
Advertise  
Award

X

Prepared by:  
Date:  
W.O. No.Chisti Dadachanji  
18-Aug-08  
141500

(Project Title)

## ACTIVITY

CIP NO. OR OTHER SOURCE OF FUNDS  
41-931.6

## TOTALS

## % OF E

	% OF E	Current	This Request	TOTAL		
<b>A. Planning/Design/Administration</b>						
4114 Preliminary Engineering	4.03%	0.00	400,000.00	400,000.00		
4115 Outside Engir	0.50%		50,000.00	50,000.00		
4116 Construction Engineering	8.05%		800,000.00	800,000.00		
4118 Engineering Design	0.00%		0.00	0.00		
41181 Engineering Design #2	0.00%		0.00	0.00		
4119 Environ. Impact Studies	0.00%		0.00	0.00		
4151 Professional Services	0.00%	0.00	0.00	0.00		
4159 Construction Management	0.00%	0.00	0.00	0.00		
4240 Reimbursement Agreements	0.00%			0.00		
<b>Total Planning/Design/Administration</b>		0.00	1,250,000.00	1,250,000.00	1,250,000.00	12.58%
<b>B. Construction</b>						
4150 Safety	0.00%		0.00	0.00		
4124 Design Build Contracts	82.51%	0.00	8,197,000.00	8,197,000.00		
42201 Construction Contract #2	0.00%		0.00	0.00		
42220 JOC	0.00%		0.00	0.00		
4226 City Forces Work	0.00%		0.00	0.00		
4810 OCIP / Professional Liability	0.00%		0.00	0.00		
4981 SDDPC Support	0.00%		0.00	0.00		
<b>Total Construction</b>		0.00	8,197,000.00	8,197,000.00	8,197,000.00	82.51%
<b>C. Equipment and Furnishings</b>						
3316 Pipe Fittings	0.00%		0.00	0.00		
4922 Construction Related	0.00%		0.00	0.00		
<b>Total Equipment and Furnishings</b>		0.00	0.00	0.00	0.00	0.00%
<b>D. Contingencies</b>						
4905 Contingencies	4.91%		488,000.00	488,000.00		
4909 Pooled Contingencies			0.00	0.00		
<b>Total Contingencies</b>			488,000.00	488,000.00	488,000.00	4.91%
<b>E SUBTOTAL</b>		0.00	9,935,000.00	9,935,000.00	9,935,000.00	100.00%
<b>F. Equipment &amp; Furnishings</b>						
4922 Equipment & Furnishings				0.00	0.00	
<b>G Land Aquisition</b>						
4638 Land Acquisition				0.00	0.00	
<b>TOTAL PRO.</b>		0.00	9,935,000.00	9,935,000.00	9,935,000.00	

(When Applicable)		
SAVINGS BY USE OF CITY FORCES		
	City Forces	Contract
Labor		
Material		
Equip.		
Profit		
<b>TOTAL</b>	0	0

Prev. Auth. Res. #  
 Prev. Auth. Res. #  
 Prev. Auth. Res. #  
 Prev. Auth. Res. #  
 Prev. Auth. Res. #  
 Prev. Auth. Res. #  
 Total Previous Authorized

ADDITIONAL AUTH. REQUIRED

FUNDING:  
CIP NO.

41509

41-931.6

THIS REQUEST

9,935,000.00

9,935,000.00

COMMENTS: Contingency is 6%, due to the age of the pump stations and forecasted unknown situation.

**REQUEST FOR COUNCIL ACTION**  
CITY OF SAN DIEGO1. CERTIFICATE NUMBER  
(FOR AUDITOR'S USE ONLY)

2900283

3. DATE:

8/18/08

CITY ATTORNEY

2. FROM (ORIGINATING DEPARTMENT):

ENGINEERING AND CAPITAL PROJECTS

4. SUBJECT: Awarding of Design Build – Pump Station 1 and Pump Station 2 Electrical Upgrade and New Building at Pump Station 2 Project

5. PRIMARY CONTACT (NAME, PHONE &amp; MAIL STA.)

Darren Greenhalgh (619)533-6600 MS 908A

6. SECONDARY CONTACT (NAME, PHONE &amp; MAIL STA.)

Hossein Azar (619)533-4102 MS 908A

7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED ☐**8. COMPLETE FOR ACCOUNTING PURPOSES**

FUND	41509	41509			9. ADDITIONAL INFORMATION / ESTIMATED COST:
DEPT.	779	779			D/B Contract \$ 8,197,000
ORGANIZATION	N/A	N/A			Contingency 488,000
OBJECT ACCOUNT	4279	4279			As-Needed Eng. 50,000
JOB ORDER	141500	419260			Project Admin. 400,000
C.I.P. NUMBER	41-931.6	41-926.0 AA			Const Admin. 800,000
AMOUNT	<del>\$ 9,935,000</del>	\$9,535,000			Total Request \$ 9,935,000
	\$ 400,000				

**10. ROUTING AND APPROVALS**

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	DEPARTMENT DIRECTOR			9	COO		10/10/08
2	MWWWD			10	P&C		10/10/08
3	EOCP			11	CITY ATTORNEY		10/16/08
4	E.A.S.	ON FILE		12	ORIGINATING DEPARTMENT		10/21/08
5	LIAISON OFFICE		9/9/08	13			
6	FM		10/2/08				
7	COMPTROLLER		10/6/08				
8	DEPUTY CHIEF		10/9/08				

DOCKET COORD: \_\_\_\_\_ COUNCIL LIAISON:

COUNCIL PRESIDENT ☐ SPOB ☐ CONSENT ☒ ADOPTION

REFER TO: \_\_\_\_\_ COUNCIL DATE: 11/17/08

11. PREPARATION OF:

☒ RESOLUTION(S)☐ ORDINANCE(S)☒ AGREEMENT(S)☐ DEED(S)

1. Awarding a contract for design and construction of the Pump Station 1 and Pump Station 2 Electrical Upgrade and New Electrical Building at Pump Station 2 Project to Bergelectric Corporation in an amount not to exceed \$ 8,197,000; and

(Continued on next page)

11A. STAFF RECOMMENDATIONS:

Adopt the Ordinance

12. SPECIAL CONDITIONS:

**COUNCIL DISTRICT(S):** 8 (Hueso) and 2 (Faulconer)

**COMMUNITY AREA(S):** Barrio Logan and Reserve

**ENVIRONMENTAL IMPACT:** This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines Section 15301

**HOUSING IMPACT:** None

**CITY CLERK INSTRUCTION:** Please return two (2) copies of the 1472, Resolutions and Agreement to Joanne Ferrer (619)533-6672 MS 908A and one (1) copy to Bob Barreras at MS 901A.

**ATTACHMENTS:** Agreement, Project Cost Estimate, Environmental Exemption, Ownership Information Form, Determination Form and Location Map

**EXPANSION/REPLACEMENT:** Expansion 25%; Replacement 75%

## SECTION 11 – PREPARATION OF: RESOLUTIONS, ORDINANCES, ETC. (CONTINUED):

2. Amend the appropriation ordinance to add CIP 41-931.6, Pump Station 1 and Pump Station 2 Electrical Upgrade and New Building at Pump Station 2 Project, to the Fiscal Year 2009 Capital Improvement Program; and
3. Authorize the transfer of \$ 9,535,000 from CIP 41-926.0, Annual Allocation – Metropolitan System Pump Stations to CIP 41-931.6, Pump Station 1 and Pump Station 2 Electrical Upgrade and New Building at Pump Station 2 Project, within Fund 41509, Sewer; and
4. Authorizing the expenditure of \$ 9,935,000 from CIP 41-931.6, Pump Station 1 and Pump Station 2 Electrical Upgrade and New Building at Pump Station 2 Project, Fund 41509, Sewer, for the purpose of providing funds for the project's construction and related costs, contingent upon the City Comptroller furnishing a certificate certifying that funds necessary for expenditure are, or will be, on deposit with the City Treasurer; and
5. Authorizing the City Comptroller, upon the advice from the administering department, to return excess budgeted funds, if any, to the appropriate reserves.

**EXECUTIVE SUMMARY SHEET**  
CITY OF SAN DIEGO

DATE ISSUED: 8/18/08  
ATTENTION: Council President and City Council  
ORIGINATING DEPARTMENT: Engineering and Capital Projects, Architectural Engineering and Parks Division  
SUBJECT: Awarding of Design Build – Pump Station 1 and Pump Station 2 Electrical Upgrade and New Building at Pump Station 2  
COUNCIL DISTRICT(S): 8 (Hueso) and 2 (Faulconer)  
CONTACT/PHONE NUMBER: Darren Greenhalgh (619)533-6600  
Hossein Azar (619)533-4102  
Chisti Dadachanji (619)533-4648

REQUESTED ACTION: Council authorization to award a contract for the design and construction of Design/Build Project of Pump Station 1 and Pump Station 2 Electrical Upgrade and New Building at Pump Station 2 to Bergelectric Corporation.

STAFF RECOMMENDATION: Adopt the Ordinance.

EXECUTIVE SUMMARY: A Power Reliability Study was conducted in 2003 to evaluate the electrical systems at Pump Station 1 and Pump Station 2, the two largest and the most critical pump stations in the Metropolitan Sewerage System. In this study, deficiencies with regards to compliance with current National Electric Code as well as Environmental Protection Agency (EPA) guidelines for Waste Water Treatment Facilities were evaluated. This project has evolved from the recommendations made to improve the overall power reliability of the entire electrical distribution system for these two pump stations.

Pump Station 1 auxiliary electrical distribution system utilizes the original installed hardware that was built in 1963 which does not provide automatic emergency transfer function from one utility feed to another if one of the utility feed fails. This project will replace the original electrical equipment with new equipment which would have the capability of providing automatic emergency transfer and eliminating single point failures. This capability is required by current EPA guidelines.

Pump Station 2 was also built in 1963. Numerous additions and modifications to the electrical system over the past 45 years have resulted in a very complicated system. Due to the age and lack of availability of the spare parts the original 1963 installed Main Switchgear will be replaced with new equipment which could accommodate a future new service from SDG&E and also accept the addition of on site emergency generator.

This electrical upgrade will add a higher degree of reliability to the San Diego Metropolitan Wastewater System by ensuring reliable operations of the pump stations during on site distribution outages or component failures and would go a long way in preventing costly sewer spills.



EQUAL OPPORTUNITY CONTRACTING:

Funding Agency

City of San Diego

Sub consultant Participation:

\$110,566.00

Certified Firms (1.35%)

\$3,813,607.00

Other Participation (46.52%)

Other

Workforce Report Submitted. Staff will monitor plan and Adherence to Nondiscrimination Ordinance.

FISCAL CONSIDERATIONS: The total cost of this project is \$9,935,000. Funding of \$9,935,000 will be available in the Enterprise Fund, CIP 41-931.6, Pump Station 1 and Pump Station 2 Electrical Upgrade and New Building at Pump Station 2, Fund 41509, Sewer, for this purpose. \$9,535,000 will be transferred from CIP 41-926.0, Annual Allocation – Metropolitan System Pump Stations because this project was originally budgeted as a sublet under this Annual Allocation. The total estimated costs of this project are over \$8,000,000, so it is being converted to a stand alone project. No future funding is anticipated for this project.

The project costs of \$ 9,935,000 may be reimbursed approximately 80% by current or future debt financing.

PREVIOUS COUNCIL and/or COMMITTEE ACTION: Metro TAC Committee (8/20/08) has voted to approve the project. The subject item was presented to Metro Commission on 9/11/08 and was approved. The project was presented to Committee on Natural Resources and Culture on 9/10/08. They had some questions about EOC plan and referred the item to the Council for approval (See attached memo from EOCP Office dated September 14, 2008).

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: Not applicable.

KEY STAKEHOLDERS AND PROJECTED IMPACTS: The key stakeholders are the City of San Diego and Bergelectric Corporation.



Patti Boekamp, Director  
Engineering and Capital Projects Department



David Jarell  
Deputy Chief of Public Works

000181

**The City of San Diego  
CERTIFICATE OF CITY AUDITOR AND COMPTROLLER**

**CERTIFICATE OF UNALLOTTED BALANCE**

AC 2900283  
ORIGINATING DEPT. NO.: 779

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount: \$1,738,000.00 Fund: 41509

Purpose: Authorizing an expenditure of funds for project related costs and the transfer of \$9,535,000 from CIP 419260, Annual Allocation - Metropolitan System Pump Stations to CIP 419316, Pump Station 1 and Pump Station 2 Electrical Upgrade and New Building at Pump Station 2 Project.

Date: October 9, 2008

By: Van Nguyen

AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
001	0	41509	779		4278	141500				\$1,738,000.00
002	0	41509	779		4278	419260				\$9,535,000.00
TOTAL AMOUNT										\$11,273,000.00

FUND OVERRIDE ☐

**CERTIFICATION OF UNENCUMBERED BALANCE**

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed: \$8,197,000.00

Vendor: Bergelectric Corporation

Purpose: Authorizing an expenditure of funds for Construction of the Pump Station 1 and Pump Station 2 Electrical Upgrade and New Electrical Building at Pump Station 2 Project, CIP 419316.

Date: October 9, 2008

By: Van Nguyen

AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
001	0	41509	779		4124	141504				\$8,197,000.00
TOTAL AMOUNT										\$8,197,000.00

RESOLUTION NUMBER R-\_\_\_\_\_

DATE OF FINAL PASSAGE \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL AUTHORIZING  
AWARD OF PUBLIC WORKS CONTRACT AND TAKING  
RELATED ACTIONS IN CONNECTION WITH ELECTRICAL  
UPGRADES AT SEWER PUMP STATIONS 1 AND 2.

WHEREAS, the project for electrical upgrades to Sewer Pump Stations 1 and 2 is currently budgeted as a sublet to CIP 41-926.0, Annual Allocation – Metropolitan System Pump Stations, with \$400,000 allocated to the sublet; and

WHEREAS, because of the size of the project, the City desires to create a stand-alone project account before moving forward with the improvements; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, as follows:

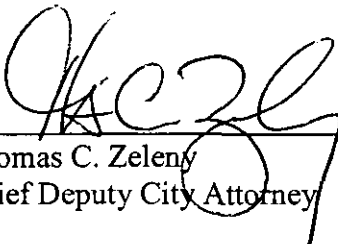
1. That the City Comptroller is authorized to amend the Fiscal Year 2009 Capital Improvement Program to add CIP 41-931.6, Pump Station 1 and Pump Station 2 Electrical Upgrade and New Electrical Building at Pump Station 2 Project (the "Project").
2. That the City Comptroller is authorized to transfer \$9,535,000 from CIP 41-926.0, Annual Allocation – Metropolitan System Pump Stations to CIP 41-931.6, Pump Station 1 and Pump Station 2 Electrical Upgrade and New Electrical Building at Pump Station 2 Project, both within Sewer Fund 41509.
3. That the Mayor or his designee is authorized to award a design/build contract to Bergelectric Corporation for the design and construction of the Project, on file in the Office of the City Clerk as Document No. RR-\_\_\_\_\_, in the amount of \$8,197,000.

4. That the expenditure of an amount not to exceed \$9,935,000 from CIP 41-931.6 is authorized, solely and exclusively to provide funds for the above contract, contingency, and related costs, provided the City Comptroller first furnishes one or more certificates demonstrating the funds necessary for expenditure are, or will be, on deposit in the City Treasury.

5. That the City Comptroller is authorized to transfer excess budgeted funds, if any, to the appropriate reserves on advice from the administering department.

6. That this activity is categorically exempt from the California Environmental Quality Act pursuant to CEQA Guidelines section 15301(b) as the repair, maintenance, or minor alteration of existing sewer facilities.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By   
Thomas C. Zeleny  
Chief Deputy City Attorney

TCZ:  
10/16/08  
Aud.Cert:2900283  
Or.Dept:E&CP  
R-2009-481

I hereby certify that the foregoing Resolution was passed by the Council of the City of Diego,  
at its meeting of \_\_\_\_\_.

ELIZABETH S. MALAND, City Clerk

By \_\_\_\_\_  
Deputy City Clerk

Approved: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

**000187**

**AGREEMENT**

**FOR**

**DESIGN/BUILD SERVICES**

**BETWEEN**

**BERGELECTRIC CORPORATION**

**AND THE**

**ENGINEERING AND CAPITAL PROJECTS DEPARTMENT**

**OF THE**

**CITY OF SAN DIEGO**

**FOR THE**

**PUMP STATION 1 AND PUMP STATION 2 ELECTRICALUPGRADE AND  
NEW ELECTRICAL BUILDING AT PUMP STATION 2 PROJECT**

**July 2008**

**STATE WAGE RATES APPLY TO THIS PROJECT**

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## LIST OF EXHIBITS

EXHIBIT A - List of Contract Documents

EXHIBIT B - Site Description

EXHIBIT C - Schedule

EXHIBIT D - Schedule of Fee Payment

EXHIBIT E - Owner Governmental Approvals

EXHIBIT F - Equal Opportunity Contracting Program (EOCP) Design/build Requirements

EXHIBIT G - Work Force Report

EXHIBIT H - Drug-Free Workplace Certification

EXHIBIT I - Americans with Disabilities Act Requirements

EXHIBIT J - California State Requirements

EXHIBIT K - Designation of Authorized Representatives

EXHIBIT L - Payment and Performance Bonds

EXHIBIT M – Water Pollution Control

EXHIBIT N - Hazardous Materials

EXHIBIT O - Procedure for Review of Design Materials

EXHIBIT P - Scope of Work

EXHIBIT Q - Supplementary General Conditions



This Design/Build Agreement, hereinafter referred to as the "Agreement", is entered into this day of October 15, 200<sup>8</sup> by and between the City of San Diego, hereinafter referred to as the "City", and BERGELECTRIC hereinafter referred to as the "Design/Builder".

### RECITALS

WHEREAS, the City has issued a Request for Proposals dated March 25, 2008 pursuant to which the City solicited Proposals from design/build teams to design and construct the Pump Station 1 and Pump Station 2 Electrical Upgrade and New Electrical Building at Pump Station 2, hereinafter referred to as the "Project"; and

WHEREAS, the City has selected the Design/Builder to perform, either directly or pursuant to Subcontracts, hereinafter defined, the design, engineering and construction services set forth in this Agreement and the Contract Documents, hereinafter defined; and

WHEREAS, the Design/Builder is ready, willing and able to perform the services required in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the Recitals, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, do hereby agree as follows:

## ARTICLE 1 – DEFINITION

**1.1 “Addenda”** means written or graphic instruments issued prior to the opening of Statements of Qualifications, Proposals, or Bids which make additions, deletions, or revisions to the Contract Documents.

**1.2 “Affidavit of Disposal”** means a notarized affidavit stating that all brush, trash, debris, and surplus materials resulting from this project have been disposed of in a legal manner.

**1.3 “Agent”** means an entity authorized in writing to act on behalf of the City or the Construction and/or Project Manager as designated in writing by the City.

**1.4 “Agreement”** means the written contract between the City and the Design/Builder covering the Work to be performed that include other documents attached to the Agreement and/or included by reference and made a part thereof as provided therein.

**1.5 “Applicable Laws”** means all laws, Codes, ordinances, rules and regulations of governmental authorities having jurisdiction over the Site and/or the Work.

**1.6 “Application for Payment”** means the document prepared by the Design/Builder which is submitted to the City showing the Design/Builder's entitlement to progress payments, the requirements of which are more fully described in Article 5.3 hereof.

**1.7 “Architect-Engineer”** means the Design/Builder or its designated Architect-Engineering firm.

**1.8 “Authorized Representatives”** means those individuals appointed by the City and the Design/Builder from time to time in accordance with the provisions of Articles 3.1.1, 3.1.2, and Exhibit K hereof.

**1.9 “Beneficial Occupancy”** means use by the City of the entire work after Substantial Completion prior to final acceptance.

**1.10 “Bonds”** means Bid, Performance, and Payment Bonds and other instruments which protect the City

against loss due to inability or refusal of the Design/Builder to perform its obligation as set forth in the Agreement.

**1.11 “Business Day”** means Day other than weekend, national or local holiday in which the City of San Diego is open for business.

**1.12 “Certificate of Substantial Completion”** means a certificate prepared by the Design/Builder and forwarded to the City, for approval, stating that the Design/Builder believes in good faith that the Project is sufficiently complete so it can be used for its intended purpose.

**1.13 “Change Order”** means a written order signed by the Design/Builder and the City authorizing a change in the Work constituting an addition, deletion, or revision, which also may adjust the Contract Price and/or the Contract Time. The Contract Price and/or Contract Time may be changed only by Change Order.

**1.14 “City”** means the City of San Diego.

**1.15 “Mayor or designee”** means the City of San Diego Mayor or a designated representative.

**1.16 “Claim”** means a written demand by the Design/Builder seeking an adjustment in Contract Price and payment of monies so due, an extension or shortening in Contract Time, or other relief arising under or relating to the Contract following denial of a Contractors' request in a City's Initial Determination.

**1.17 “Change Proposal”** means a Proposal for a Change Order submitted by the Design/Builder to the City, either at the request of the City, or at the Design/Builder's own initiative.

**1.18 “Codes”** means the terms Government Code, Labor Code, etc., referring to codes and regulations of the State of California.

**1.19 “Concurrent Delay”** means a delay that occurs when a City caused delay and a contractor caused delay occur simultaneously and affect completion of the work within contract time or any contract milestones.

**1.20 "Contingency Costs"** means those items of the Work attributable to a contingency for which the City is responsible and which are payable by the City to the Design/Builder pursuant to a Change Order as provided in Article 6.

**1.21 "Construction Documents"** means the plans and specifications prepared by the Architect-Engineer for the Project, approved by the City, and incorporated into this Agreement by reference after such approval, to be used to construct the Project. The Construction Documents shall set forth in detail all items necessary to complete the construction of the Project in accordance with the Contract Documents.

**1.22 "Construction Notice to Proceed (NTP)"** means the notice given by the City to the Design/Builder stating that the Site is available to the Design/Builder and directing the Design/Builder to commence construction of the Project.

**1.23 "Construction Phase"** means the period set forth in the Schedule beginning with the issuance of the Construction Notice to Proceed and ending on the date of Final Completion of the Project.

**1.24 "Construction Work"** means that portion of the Work consisting of the provision of labor, materials, equipment and services provided in connection with the construction of the Project as set forth in the Contract Documents.

**1.25 "Contract Documents"** means those documents set forth in Exhibit A, the Request for Qualifications, Statement of Qualifications, Request for Proposals, and the Design/Builder's Proposal, all of which, together with this Agreement, form the entire integrated Agreement between the City and the Design/Builder.

**1.26 "Contract Price"** means the total monies payable by the City to the Design/Builder under the terms and conditions of the Contract Documents.

**1.27 "Contract Time"** means the period of time, including authorized adjustments, allotted in the Schedule for the Substantial Completion of the Work.

**1.28 "CPM"** means a critical path method progress schedule in the form of precedents, networks and time sequences.

**1.29 "Day"** means a calendar day of 24 hours measured from midnight to the next midnight.

**1.30 "Default"** shall have the meaning set forth in Article 12.3.2 hereof.

**1.31 "Defective Work"** means Work that is unsatisfactory, faulty, or deficient; or does not conform to the Contract Documents; or that does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents; or Work that has been damaged by anyone other than City prior to Final Acceptance.

**1.32 "Delay Costs"** means those items of the Work attributable to an Excusable Delay for which the City is responsible and which are payable by the City to the Design/Builder pursuant to a Change Order as provided in Article 6.

**1.33 "Demobilization"** means the complete dismantling and removal by the Design/Builder of all of the Design/Builder's temporary facilities, equipment and personnel at the Site.

**1.34 "Design/Builder"** means Bergelectric

**1.35 "Design/Builder Default"** shall have the meaning set forth in Article 12.3.2 hereof.

**1.36 "Design Materials"** means any and all documents, Shop Drawings, electronic information, data, plans, drawings, sketches, illustrations, specifications, descriptions, models and other information developed, prepared, furnished, delivered or required to be delivered by the Design/Builder (a) to the City under the Contract Documents or (b) developed or prepared by the Design/Builder specifically to discharge its duties under the Contract Documents.

**1.37 "Design Phase"** means the period set forth in the Schedule commencing with the Design/Builder's receipt of a Notice to Begin Design and ending upon the date the City approves the Construction Documents.

**1.38 "Design Work"** means that portion of the Work consisting of the design services required to be provided in connection with the design of the Project

as set forth in the Contract Documents, and subcontracted by the Design/Builder to the Architect-Engineer, which shall be performed consistent with the standards of professional care exercised by national design firms.

**1.39 "Disputed Work"** means work that is the subject of disagreement between the Design/Builder and the City until the City renders an initial determination. If the issue is unresolved after the Initial Determination it becomes a Claim.

**1.40 "Effective Date of the Agreement"** means the date indicated in the Agreement on which it becomes effective, but if no such date is indicated it means the date on which the Agreement is signed and delivered by the last of the Parties to sign and deliver.

**1.41 "Excusable Delay"** shall have the meaning set forth in Article 4.6.2 hereof.

**1.42 "Extended Overhead"** means any and all costs incurred either in the field or at the Design/Builder's resulting from additional work excluding direct costs related to direct hourly labor, equipment, or materials necessary to complete the additional work.

**1.43 "Final Completion"** means the point at which the Work has been completed in accordance with the terms and conditions of the Contract Documents, including Punch List items and a Notice of Completion Certification is recorded by the City.

**1.44 "Final Payment"** means the last progress payment made to the Design/Builder for earned funds, less Retention and deduction as applicable. The Design/Builder is entitled to this payment when the Milestone is recorded.

**1.45 "Force Majeure"** means fire, unavoidable casualty, flood assuming Design/Builder has taken reasonable precautions, earthquake, epidemic, civil disturbance, war, freight embargo, riot, sabotage by persons other than the Design/Builder, Subcontractors and Subconsultants, or any other similar act or condition, in each case only to the extent the event in question is beyond the control of and without the fault or negligence of the Design/Builder.

**1.46 "Governmental Approvals"** means those governmental, including agency actions required to be

obtained by the City and necessary for the completion of the Project, including, but not limited to, modification of existing zoning, vacation of certain streets and/or alleys, and modifications to or variances from applicable building codes, all as more fully described in Exhibit E hereto.

**1.47 "General Conditions"** means all the conditions included in this Agreement.

**1.48 "General Requirements"** means those identified in the Supplementary General Conditions of this Agreement.

**1.49 "Hazardous Materials or Waste"** means those items identified in Section 104 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time or, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law, whichever is more restrictive.

**1.50 "Holidays"** means The City of San Diego legal Holidays which occur on:

New Year's Day - January 1  
 Martin Luther King's Birthday - Third Monday in January  
 President's Day - Third Monday in February  
 Cesar Chavez Day - March 31  
 Memorial Day - Last Monday in May  
 Independence Day - July 4  
 Labor Day - First Monday in September  
 Veteran's Day - November 11  
 Thanksgiving Day - Fourth Thursday in November  
 Christmas Day - December 25

If any holiday listed above falls on a Saturday; Saturday and the preceding Friday are both legal Holidays. If the holiday should fall on a Sunday; Sunday and the following Monday are both legal Holidays.

**1.51 "Interim Contract Milestone"** means a principal event specified in the Contract Documents relating to an intermediate completion date of a portion of the Work, or a period of time within which the portion of the work should be performed prior to Substantial Completion of all the Work. Liquidated

damages are frequently associated with these milestones.

**1.52 “Indemnified Parties”** means the City, its elected officials, legally designated officials, appointee, Agents, and employees.

**1.53 “Laws and Regulations”** means any and all Applicable Laws, rules, regulations, ordinances, and/or orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.

**1.54 “Liquidated Damages”** means the damages payable by the Design/Builder to the City in the event the Design/Builder does not achieve a specified Milestone and/or Substantial Completion of the Project by the date required on the Schedule, as adjusted, as more fully described in Article 4.8 hereof.

**1.55 “Milestone”** means a principal event specified in the Contract Documents relating to a completion date of a portion of the Work, or a period of time within which the portion of the work should be performed prior to Substantial Completion of all the Work. Liquidated damages are frequently associated with these Milestones.

**1.56 “Mobilization”** means the establishment by the Design/Builder of the temporary facilities, equipment and personnel at the Site thereby enabling the Work to commence. The Design/Builder shall be required to prepare a **“Mobilization Plan”** that will describe and govern the Design/Builder’s mobilization activities.

**1.57 “Notice to Begin Design”** means the notice given by the City to the Design/Builder stating that the Design/Builder is authorized to begin the design of the Project.

**1.58 “Notice of Completion Certification”** means a certificate prepared by the Design/Builder and forwarded to the City stating that the Design/Builder believes in good faith that the Project is finally complete, fixing the date of completion, and that the Design/Builder is entitled to Final Payment in accordance with the provisions of Article 5.14 hereof. After acceptance of the Work by the City, the form is signed by the City and filed with the County Recorder. This filing starts the thirty (30) Day lien filing period on the Work.

**1.59 “Notice of Resumption of Work”** means a written notification from the City to the Design/Builder to resume the Work after a City-mandated suspension of Work.

**1.60 “Notice to Proceed”** means a written notice issued by the City to the Design/Builder authorizing the Design/Builder to proceed with the WORK and establishing the date of commencement of the Contract Time.

**1.61 “Order of Magnitude Documents”** means the drawings, specifications and other documents prepared for the Design/Builder by the Architect-Engineer for the City’s review and approval prior to the preparation of the Construction Documents, as more particularly specified in Exhibit P hereto. The Order of Magnitude Documents shall illustrate the scale and relationship of Project components, outline the nature and structural exterior and three dimensional scale of the Project and shall fix and describe in detail the configuration and character of the Project concerning all items of the Project necessary for the complete and final preparation of the Construction Documents in accordance with the requirements of the Contract Documents, including architectural, mechanical and electrical systems, materials and such other elements as may be appropriate.

**1.62 “Party” or “Parties”** means the City and/or the Design/Builder, their respective permitted successors and/or assigns, and any other future signatories to this Agreement.

**1.63 “Payment and Performance Bonds”** means the payment bond and performance bond issued by the Surety, in the form set forth in Exhibit L, covering the faithful performance and completion of the Construction Work, including payment for all materials and labor furnished or supplied in connection with the Construction Work, by the Design/Builder, Subcontractors and Subconsultants.

**1.64 “Product Data”** means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Design/Builder to illustrate materials or equipment for some portion of the Work.

**1.65 “Project”** means the project as described in Exhibit P.

**1.66 “Proposal”** means the document submitted by any individual, firm, partnership, corporation or combination thereof, for the consideration by the City with reference to the Work contemplated under the Contract Documents.

**1.67 “Punch List”** means those minor items of Work to be completed after Substantial Completion and prior to Final Completion, which do not prevent the Project from being used for the purpose for which it is intended and which will not prevent the issuance of a certificate of occupancy.

**1.68 “Request for Change”** see Change Proposal.

**1.69 “Request for Proposal (RFP)”** means (1) the solicitation by the City to prospective proposers upon which an evaluated selection of a Design/Builder will be made by the City; (2) the standardized form used by the City to request a Proposal from the Design/Builder for proposed changes in the Work.

**1.70 “Retention”** means the amount withheld from progress payments by the City from the Design/Builder from time to time, as more fully described in Article 5.5 hereof.

**1.71 “Samples”** means physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

**1.72 “Safety”** includes health and security.

**1.73 “Schedule”** means the schedule attached hereto as Exhibit C pursuant to which the Design/Builder has agreed to substantially complete the Work. The Schedule may be adjusted pursuant to the provisions of the Contract Documents.

**1.74 “Scope Change Costs”** means those items of Work attributable to changes in the Scope of Work and payable by the City to the Design/Builder pursuant to a Change Order, as provided in Article 6.

**1.75 “Separate Contractors”** means those individuals or entities, including, but not limited to, concessionaires, who have entered into arrangements with the City for the provision of labor, materials or

other services in connection with the Project who are not under contract with the Design/Builder.

**1.76 “Shop Drawings”** means all drawings, diagrams, illustrations, schedules and other data which are specifically prepared by or for the Design/Builder and submitted by the Design/Builder to illustrate some portion of Work and all illustrations, brochures, standard schedules, performance charts, instructions, and diagrams to illustrate material or equipment for some portion of the Work.

**1.77 “Site”** means the real property on which the Project will be located, which is more fully described in Exhibit B hereto.

**1.78 “Statement of Qualifications”** means the document submitted by any individual, firm, partnership, corporation or combination thereof, for the consideration by the City as to the individual, firm partnership, corporation or combination thereof expertise, experience and capabilities to perform the Work required of the Project.

**1.79 “Subconsultants”** means the individual, partnership, corporation, joint-venture or other legal entity having a contract with the Design/Builder to furnish services with respect to the Project and who is identified as such in the Contract Documents.

**1.80 “Subconsulting Agreement”** means an agreement between the Design/Builder and the Architect and/or Design or Engineering Consultant.

**1.81 “Subcontract”** means an agreement between the Design/Builder and another person or entity engaged to perform a portion of the Work.

**1.82 “Subcontractor”** means an individual or entity that has entered into an arrangement with the Design/Builder for the provision of labor, materials or other services required to be performed by the Design/Builder under the Contract Documents.

**1.83 “Submittals”** means the information which is specified for submission by the Design/Builder to the City in accordance with this Agreement.

**1.84 “Substantial Completion”** means the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance

with the Contract Documents so that it may be used by the City for its intended purpose. Liquidated Damages and Design/Builder's right to Extended Overhead shall cease at Substantial Completion.

**1.85 "Supplier"** means a manufacturer, fabricator, supplier, distributor, materialman, or vendor.

**1.86 "Surety"** means one or more issuers of the Bid, Payment and Performance Bonds, each of which shall be (a) on the Treasury List for the amount of its responsibility; and (b) licensed to do business in the State of California.

**1.87 "Inexcusable Delay"** shall have the meaning set forth in Article 4.6.2.

**1.88 "Work" or "Scope of Work"** means all labor, materials and services required to be performed or provided by the Design/Builder to complete the entire Project or the various separately identifiable parts thereof pursuant to the provisions of the Contract Documents, as more fully described in Exhibit P hereto.

**1.89 "Work Change Directive"** means a written directive to the Design/Builder, issued on or after the Effective Date of the Agreement, signed by the City ordering addition, deletion or revision in the Work, or responding to differing or unforeseen physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Time, but is evidence that the Parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the Parties as to its effect, if any, on the Contract Price or Contract Time.

## **ARTICLE 2 – SCOPE OF WORK, DESIGN/BUILDER'S DUTIES AND RESPONSIBILITIES**

### **2.1 Performance of Work**

The Design/Builder agrees that it shall be responsible for performing and completing and for causing all Subconsultants and Subcontractors to perform and complete, the Work in accordance with the Scope of Work set forth in Exhibit P, the Contract Documents and Applicable Laws. The Design/Builder

agrees that the Design Work and the Design Materials provided thereunder shall be appropriate for the purposes stated in Exhibit P. Although it is the responsibility of the Design/Builder to conform the Work to Applicable Laws at all times, to the extent there is a change in one or more Applicable Laws after the date of execution of this Agreement, and such change has the effect of increasing the Contract Price or Contract Time of performance of the Work, such change may be the subject of a Change Order under the provisions of Article 6 hereof. Additionally, the Design/Builder shall be responsible for achieving Substantial Completion of the Project by the date of Substantial Completion set forth in the Schedule, Exhibit C, as the same may be extended from time to time pursuant to the provisions of this Agreement, and shall achieve Final Completion of the Project set forth in the Schedule, Exhibit C, as the same may be extended from time to time pursuant to the provisions of this Agreement. Substantial Completion will not be achieved until the City certifies the satisfactory completion of the start-up period, as further defined in the Supplementary General Conditions, performed by the Design/Builder.

### **2.2 Professional Standard; Ownership of Documents**

**2.2.1 Standards of Performance; Third Party Beneficiary.** Professional design services shall be provided in accordance with the standards of skill, expertise, and diligence of the design profession that are consistent with that of similarly situated architectural and engineering firms. The Construction Documents shall be prepared, signed and stamped by and under the direct responsible charge of an architect or engineer, duly licensed in the State of California. All other Work shall be performed in accordance with the professional standards applicable to projects, buildings or work of complexity, quality and scope comparable to the Work of this Project, and shall be performed by the Design/Builder, Subconsultants and other Subcontractors. The Design/Builder shall ensure that key personnel, as identified in its Statement of Qualifications and Proposal, assigned to the Project shall not be replaced or substituted without the prior written approval of the City. The Design/Builder and the City acknowledge that in the event that the Design/Builder fails to staff the Project with the key personnel identified in the Statement of Qualifications and Proposal the City will incur substantial damages

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and the extent of such damages shall be incapable of accurate measurement. *Nonetheless, the Parties acknowledge that on the date of this Agreement, the amount of Liquidated Damages in the amount \$50,000 represents a good faith estimate as to the actual potential damages that the City would incur as a result of unauthorized substitution of each key personnel.* Such Liquidated Damages shall be the sole and exclusive remedy of the City for such substitution on the Project, and the City hereby waives all other remedies available at law or in equity with respect to losses resulting from such unauthorized substitution. The amount of the Liquidated Damages calculated hereunder does not include any penalty. The Design/Builder may make such additions or substitutions to other personnel, not identified as key personnel, and responsibilities as it deems necessary or appropriate in order to carry out its responsibilities hereunder, provided such personnel shall be suitably qualified. The City reserves the right to have any Design/Builder, Subconsultant or Subcontractor personnel removed from the Project upon written notice from the City to the Design/Builder without cause. Nothing contained in the Contract Documents shall create a contractual relationship between the City and any third Party, Subconsultants, or Subcontractors; however, it is understood and agreed that the City, as the third-party beneficiary, is an intended third-party beneficiary of all contracts for design or engineering services, all Subcontracts, purchase orders and other agreements between the Design/Builder and third Parties. The Design/Builder shall incorporate the obligation of this contract into its respective Subcontracts, supply agreements and purchase orders.

#### **2.2.2 Use of Design Materials.**

**2.2.2.1** The City shall have unlimited rights to copy and use in connection with the Project all Design Materials, including the right to use same on the Project at no additional cost to the City, regardless of degree of completion, provided that said services performed have been fully paid for, exclusive of amounts disputed by the City in good faith, as required by the terms of this Agreement. The Design/Builder agrees to and does hereby grant to the City and any assignee or successor of the City as owner of the Project a royalty-free license to any such Design Materials as to which the Design/Builder may assert any rights under the patent or copyright laws. The Design/Builder hereby agrees to assign outright

and exclusively to the City all copyrights in the design appearance of the Project. The Design/Builder, as part of its agreements with any Subconsultant or Subcontractor, will secure such license and use rights from each such entity, and shall defend, indemnify and hold the City and any successors or assigns harmless from any claims by such entities for copyright or patent infringement.

#### **2.2.2.2 Indemnification.**

The City shall indemnify and hold harmless the Design/Builder, its Subconsultants, Subcontractors, and their respective agents and employees from and against all claims, liabilities, demands, actions, costs and expenses, collectively, "Claims", (a) arising from any use by the City, its successors or assigns of such Design Materials if the Design/Build Agreement is terminated for convenience by the City prior to Substantial Completion of the Work, or (b) arising as a result of modifications of any such Design Materials made without the prior consent of Design/Builder, and which do not result from the errors, omissions or negligence in the Design Materials supplied hereunder.

### **2.3 Local Conditions; Environmental Site Conditions**

#### **2.3.1 Local Conditions.**

The Design/Builder represents that it has taken steps reasonably necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the general and local conditions which are applicable to the Work such as (a) conditions bearing on transportation, disposal, handling and storage of materials; (b) the availability of labor, water, power and roads; (c) normal weather conditions; (d) observable physical conditions at the Site; (e) the surface conditions of the ground; and (f) the character of equipment and facilities needed prior to and during the performance of the Work. To the extent the Design/Builder encounters subsurface or concealed conditions which differ materially from those represented in the Contract Documents as set forth in Exhibit A, then notice by the Design/Builder shall be given to the City promptly before conditions are disturbed and in no event later than four (4) Business Days after the first observance of the conditions if a Change Order is contemplated by the Design/Builder due to such condition. Such materially different conditions may entitle the Design/Builder to an adjustment in the Contract Price only for the



increase costs of the Work, without markup or fee, and/or Contract Time under the provisions of Article 6 of this Agreement. If the subsurface or concealed conditions are determined to be of Hazardous Materials or Waste, the Design/Builder shall immediately notify, in no event later than one (1) Business Day, the City and proceed as set forth in Article 2.3.3 and Exhibit N.

**2.3.1.1 Disallowance of Entitlement.** The Design/Builder shall not be entitled to any adjustment in Contract Price or Contract Time or will have been deemed to have waived its right to such a Claim if:

**2.3.1.1.1** The Design/Builder knew of the existence of such conditions at the time the Design/Builder made a final commitment to the City in respect of Contract Price and Contract Time by becoming bound under this Agreement; or

**2.3.1.1.2** The existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, of the Site and contiguous areas suggested or required by the Contract Documents; or

**2.3.1.1.3** The Design/Builder failed to give the written notice within the time and as required by Article 2.3.1.

## **2.3.2 Underground Utilities**

**2.3.2.1 Utilities Indicated.** The information and data indicated in the Contract Documents with respect to existing underground utilities at or contiguous to the Site are based on information and data furnished to the City by the utility owners of such underground utilities or by others. Unless it is expressly provided in this Agreement, City shall not be responsible for the accuracy or completeness of any such information or data, and the Design/Builder shall have full responsibility for reviewing and verifying all such information and data, for locating all underground utilities indicated in the Contract Documents, for coordination of the Work with the utility owners of such underground utilities during construction, for the Safety and protection thereof and repairing any damage thereto resulting from the Work, the cost of which will be included in the Contract Price and at no additional cost to the City.

**2.3.2.2 Utilities Not Indicated.** If an underground utility is uncovered or revealed at or contiguous to the Site which was not indicated in the Contract Documents and which the Design/Builder could not reasonably have been expected to be aware of, the Design/Builder shall identify the utility owner of such underground utility and give written notice thereof to that utility owner and shall notify the City in accordance with the requirements of this Agreement. All cost for such Work shall be included in the Contract Price and at no additional cost to the City.

**2.3.2.3 Action Prior To Starting Work.** As provided in Section 4216 of the California Government Code, at least two (2) Business Days prior to commencing any excavation, the Design/Builder shall contact the regional notification center, Underground Service Alert of Southern California, and obtain an inquiry identification number.

**2.3.2.4 Locate Utilities.** The Design/Builder shall determine the location and depth of all utilities, including service connections, which have been marked by the respective utility owners and which may affect or be affected by its operations. Full compensation for such Work shall be considered as included in the Contract Price.

**2.3.2.5 Protection of Utilities.** The Design/Builder shall not interrupt the service function or disturb the support of any utility, without authority from the City or order from the utility owner. All valves, switches, vaults, and meters shall be maintained readily accessible for emergency shutoff. Where protection is required to ensure support of utilities located as shown on the Design Materials and in accordance with all Applicable Laws, the Design/Builder shall, unless otherwise provided, furnish and place the necessary protection at its expense.

**2.3.2.6 Notification Requirements If Utility Disturbed.** The Design/Builder shall immediately notify the City and utility owner if any utility is disturbed or damaged. The Design/Builder shall bear the costs of repair or replacement of any utility damaged by the Design/Builder.

**2.3.2.7 Removal of Abandoned Utilities.** Unless otherwise specified, the

Design/Builder shall remove all interfering portions of utilities shown on the Design Materials or indicated in the Contract Documents as "abandoned". Before starting removal operations, the Design/Builder shall ascertain from the utility owner whether the abandonment is complete. The costs involved in the removal and disposal shall be included in the Contract Price and at no additional cost to the City.

#### **2.3.2.8 Relocation of Utilities**

**2.3.2.8.1** When the Plans or Specifications provide for the Design/Builder to alter, relocate, or reconstruct a utility, all costs for such Work shall be included in the Contract Price and at no additional cost to the City.

**2.3.2.8.2** Temporary or permanent relocation or alteration of indicated utilities requested by the Design/Builder for its convenience shall be its responsibility, and the Design/Builder shall make all arrangements and bear all costs.

**2.3.2.8.3** After award of this Agreement, portions of utilities not indicated in the Contract Documents which are found to interfere with the Work may be relocated, altered or reconstructed by the utility owner, or the Design/Builder at no cost to the City.

#### **2.3.2.9 Delays Attributable to Underground Utilities**

**2.3.2.9.1** The Design/Builder shall immediately notify in writing the utility owner and the City of its construction schedule and any subsequent changes in the construction schedule which will affect the time available for protection, removal or relocation of utilities.

**2.3.2.9.2** The Design/Builder will not be entitled to damages or additional payment for delays attributable to utility relocations or alterations.

**2.3.2.9.3** The Design/Builder may be given a no cost extension of time for unforeseen delays attributable to unreasonably protracted interferences by others in the relocation of utilities.

**2.3.2.10 Access to the Work.** When necessary, the Design/Builder shall so conduct its operations as to permit access to the Site and provide time for utility work to be accomplished during normal work hours during the progress of the Work.

**2.3.3 Hazardous Materials and Waste.** The Parties' agreement as to the handling of Hazardous Materials and Waste discovered at the Site, and not brought there by the Design/Builder, Subconsultants or Subcontractors, is set forth in Exhibit N hereto, and the only duties and responsibilities of the Design/Builder in connection therewith are as therein specified, notwithstanding any other provision of this Agreement.

#### **2.4 Order of Magnitude Documents and Construction Documents**

**2.4.1 General.** Once the City gives the Design/Builder the Notice to Begin Design, the Design/Builder shall instruct the Architect and its Subcontractors to commence preparation of the Order of Magnitude Documents for review and approval by the City. After such approval, the Design/Builder shall cause the Architect and its Subcontractors to prepare the Construction Documents. The Order of Magnitude Documents and Construction Documents shall be consistent with, and develop in detail, the intent of the Contract Documents, and shall include documents customarily required for regulatory approval by governmental agencies. The Construction Documents shall also provide information customarily necessary for the use of such documents by those in the building trades and include all documents required for the complete and final construction of the Project, other than such details customarily developed in Shop Drawings or otherwise during construction. The City's review of the Order of Magnitude Documents and the Construction Documents shall be conducted in accordance with the durations and procedures set forth in the Procedure for Review of Design Materials, Exhibit O, and in accordance with the dates therefore set forth in the Schedule, Exhibit C. Such review shall not relieve the Design/Builder from its responsibilities under this Agreement, or be deemed to be an approval or waiver by the City of any deviation from, or of the Design/Builder's failure to comply with, any provision or requirement of the Contract Documents, unless such

deviation or failure has been identified as such in writing in the document submitted for approval by the Design/Builder and approved by the City. If the City exceeds the durations set forth in Exhibit C and O hereto for its review, the Design/Builder may be entitled to an equitable adjustment in Contract Time only in accordance with the provisions of Article 6 of this Agreement.

#### **2.4.1.1 Use of Computer Aided**

**Design** The Design/Builder will be required to use Computer Aided Drafting and Design (CADD). All CADD drawings, figures and other work shall be produced by Design/Builder, Consultants and subconsultants using City and Metro Wastewater Department standard Microstation software. As of December 7, 2001, conversions of CADD work from any other non-standard CADD format to City standard Microstation format shall not be acceptable in lieu of this requirement. Refer to Metro Wastewater Glean Water Program Guidelines and Standards for detailed requirements.

#### **2.4.2 Reliance on Approvals.**

The Design/Builder shall be entitled to rely on the approvals of the City as to general scope and purpose, as set forth in Exhibit P. In no event shall City approval be considered a specific approval with respect to the Design Materials. City shall have the right to accept, reject or suggest change to the Order of Magnitude Documents to achieve conformity with general scope as set forth in Exhibit P, with no increase in Contract Price or Contract Time.

If the City revokes, modifies or otherwise changes in a material way its approval of a given system after such system has been designed and approved, or modifies the original Scope of Work in a material manner requiring modification to one or more systems which have been designed and approved, the Design/Builder shall be entitled to a Change Order in accordance with the provisions of Article 6 hereof, provided that prior to such approval the Design/Builder has made the City aware of future design decisions which may be affected by such approval. No Change Order shall be issued to the extent such Change Order is due to the fault or neglect of the Design/Builder.

#### **2.4.3 Review of Contract Documents**

**and Field Conditions.** The Design/Builder shall be responsible for all errors, inconsistencies or omissions

in the Contract Documents. The Design/Builder shall take field measurements and verify field conditions and shall carefully compare such field conditions and other information known to the Design/Builder with the Contract Documents before commencing activities. The Design/Builder shall perform the Work in accordance with the Contract Documents and required submittals approved in accordance with the procedures set forth in Exhibit O.

## **2.5 Legal Requirements**

#### **2.5.1 Applicable Laws.**

The Design/Builder shall observe and comply with all federal, state, and local laws, ordinances, codes, orders, and regulations which in any manner affect those engaged or employed on the WORK, the materials used in the WORK, or the conduct of the WORK, and shall give applicable notices pertaining thereto. Except with respect to Governmental Approvals, as set forth in Exhibit E, the Design/Builder shall prepare and file all documents required to obtain the necessary approvals of governmental authorities having jurisdiction over the Work and/or the Project and shall secure and pay for permits and governmental fees, licenses and inspections necessary for the proper execution of the Work and completion of the Project. Notwithstanding the foregoing, the City has informed the Design/Builder that fees in connection with building permits, street use permits, and similar permits relating to construction will be waived by the applicable entities, and are not to be included in the Contract Price. If and to the extent such entities impose charges in the future for such permits, such charges shall be paid by the City, or shall be the subject of a Change Order to this Agreement in accordance with the provisions of Article 6 of this Agreement.

**2.5.2 Antitrust Claims.** Section 4551 of the Government Code applies to this contract and provides that:

"In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the CONTRACTOR (Design/Builder) or subcontractor offers and agrees to assign to the OWNER (City) all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2

[commencing with Section 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the OWNER (City) tenders to the CONTRACTOR (Design/Builder), without further acknowledgment by the Parties."

**2.5.3 National Labor Relations Board Requirements.** The Design/Builder shall, in the Contract Price, comply with all National Labor Relations Board requirements for accessing the Site.

**2.5.4 OSHA/Cal Osha Citations.** The Design/Builder shall indemnify the City against fines, reasonable attorneys' fees, and defense costs resulting from citations issued to the City by either the federal, state, or local Safety enforcement agencies due to the Design/Builder's failure to abide by applicable Safety and health standards.

**2.5.5 Access for Individuals with Disabilities.** D/B shall warrant and certify that all Project design, plans, and specifications prepared in accordance with this Contract shall meet the current and adopted standards of the access law: the 1990 Americans with Disabilities Act [ADA]/Americans with Disabilities Act Accessibility Guidelines [ADAAG], California Code of Regulations [Title 24 Disabled Access Regulations], and the City's local regulations, policies and standards on accessibility. Where conflict exists in the access law, the most restrictive requirement shall be applied. As a condition precedent to Award of this Contract, D/B shall submit to City the Design-Builder Certification for Title 24/ADA Compliance.

D/B is responsible as a designer, employer, construction contractor, and Resident Engineer to comply with all portions of the access law. (For specific services and public accommodations, D/B may contact the Office of the Americans with Disabilities Act, Civil Rights Division, U.S. Department of Justice, P.O. Box 66118, Washington, D.C. 20035-6118; phone number (202) 514-0301.) D/B acknowledges and agrees that D/B is aware of and will comply with Council Policy 100-04, incorporated herein by this reference, adopted by Resolution No. R-282153, relating to the federally-mandated ADA. D/B and Contractors will be

individually responsible for administering their own ADA and Title 24 program.

D/B shall pay all claims, costs, losses and damages incurred by City in undertaking remedial action to correct City determined violations of ADA or Title 24. To effectuate remedial action, City will issue a Change Order incorporating the necessary revisions in the Construction Documents. City shall be entitled to an appropriate decrease in the Contract Price, and, if the Parties are unable to agree as to the amount thereof, City may unilaterally issue the Change Order.

## **2.6 Services and Facilities**

**2.6.1 General.** The Design/Builder shall provide everything required for the orderly progress and proper execution and completion of the Work and the Project in accordance with the requirements of the Contract Documents, whether temporary or permanent and whether or not incorporated or to be incorporated into the Work, including, but not limited to, design services, labor, materials, equipment, furnishings, tools, construction equipment and machinery, utilities, transportation and other facilities and services.

**2.6.2 Supervision.** The Design/Builder shall supervise and direct the Work in accordance with professional skill and attention. The Design/Builder shall be solely responsible for and have control over design and construction means, methods, techniques, sequences and procedures. The Design/Builder shall be responsible to the City for the acts and omissions of, and whenever this Agreement refers to the negligence, fault or omission of the Design/Builder, including the negligence, fault or omission of, the Design/Builder's employees, Subconsultants, Subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with the Design/Builder. The Design/Builder shall not be relieved of obligations to perform the Work in accordance with the Contract Documents by tests, inspections or approvals required or performed by persons other than the Design/Builder.

### **2.6.3 Superintendent**

The Design/Builder shall employ a competent superintendent and necessary assistants who shall be in attendance at the Site during performance of the Construction Work. The superintendent shall represent

the Design/Builder, and communications given to the superintendent shall be as binding as if given to the Design/Builder. Important communications shall be confirmed in writing. Other communications shall be similarly **confirmed on written request in each case.**

**2.6.4 Coordination.** In accordance with the requirements of Exhibit P hereto, the Design/Builder shall coordinate design and construction requirements with governmental agencies, utilities, and all other Parties either involved in infrastructure improvements or otherwise affected by the design and construction requirements.

**2.6.5 Cooperation.** In accordance with the requirements of Exhibit P hereto, the Design/Builder shall assist the City's staff and reasonably cooperate with the City's legal, financial, design and construction consultants and all other designated representatives during the design and construction of the Project.

**2.6.6 Management.** The Design/Builder shall implement suitable management systems and work plans for the Project relative to safety, quality assurance and managing and controlling the Work.

**2.6.7 Reports.** The Design/Builder shall prepare and submit to the City, during both the Design Phase and the Construction Phase, monthly progress reports, in a manner and format acceptable to the City, on the Work accomplished during the prior monthly period. Such reports shall be furnished at the time of submission of each monthly Application for Payment. As part of such report, the Design/Builder shall provide an updated Schedule, including CPM illustrating the progress which has been made and specifically whether the Work is on schedule or behind schedule and actions being taken to correct Schedule slippage. The monthly report shall also set forth the Design/Builder's projected progress for the forthcoming month.

**2.6.8 Means, Methods, Techniques, Sequences or Procedures.** The Design/Builder is solely responsible for selecting the means, methods, techniques, sequences or procedures of performing the Work. If the Design/Builder elects or chooses to adopt or follow, in whole or part, any means, means, methods, techniques, sequences or procedures of performing the Work developed or suggested by the City, the Design/Builder does so at its own risk and

bears sole responsibility for such election or choice. The City assumes no responsibility thereof and in no way will be held liable for any defects in the Work, or increased costs or delays in the Work, which may result from or be caused by the Design/Builder's use of such means, methods, techniques, sequences or procedures.

## **2.7 Warranty**

The Design/Builder warrants to the City that any and all materials, equipment and furnishings incorporated in the Work will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The foregoing warranty excludes damage or defect caused solely by the City by abuse, modifications, improper or insufficient maintenance, or improper operation, or normal wear and tear under normal usage. Such warranty shall exclude warranties relating to design, warranty of fitness, and any other express or implied warranties other than as set forth herein or in the Contract Documents; provided, however, that the foregoing shall not impair the rights of the City to maintain an action for breach of contract against the Design/Builder.

**2.7.1 Warranties of Subconsultants, Subcontractors and Suppliers.** All warranties and guarantees of Subconsultants, Subcontractors and Suppliers with respect to any portion of the Work shall be obtained by the Design/Builder so as to extend for the benefit of and be available to be asserted in the name of the City. The Design/Builder shall use its best efforts to obtain from all Subconsultants, Subcontractors and Suppliers guarantees and warranties with terms and period customarily available in the industry. During the Design/Builder's warranty period, the Design/Builder shall enforce such warranties and guarantees on behalf of the City. The Design/Builder shall cause its Subconsultants, Subcontractors and Suppliers to include in the Subcontracts and purchase orders the requirement that all guarantees and warranties be obtained so as to extend for the benefit of, and be available to be

asserted in the name of, City, which obligation shall be specifically incorporated by reference into any Subcontracts, or any lower tier Subcontracts or purchase orders. To the extent that any such warranty of guarantee would be voided by reason of the Design/Builder's negligence or other fault in incorporating material or equipment into the Work, the Design/Builder shall be responsible for correcting such defect and shall be responsible pursuant to warranty obligations set forth in Article 2.7.

## **2.8 Taxes**

The Design/Builder shall pay, at no additional cost to the City, all applicable Federal, State and local sales, consumer, use and similar taxes, whether direct or indirect, relating to, or incurred in connection with, the performance of the Work, excluding taxes based on the Design/Builder's income. In the event the Design/Builder is obligated to pay any new or increased taxes or duties arising after the date hereof, the actual assessed amount of such new or increased taxes shall increase the Contract Price pursuant to the Change Order provisions of Article 6 of this Agreement. In the event the Design/Builder receives the benefit of a tax exemption or tax reduction taking effect after the date hereof, the amount of such exemption or reduction shall decrease the Contract Price pursuant to the provisions of Article 6 of this Agreement.

## **2.9 Access by City**

The Design/Builder shall afford the City and its authorized designee's access to the Site at all times, subject to reasonable prior notice for access outside of normal business hours.

## **2.10 Use of Site**

The Design/Builder shall, prior to on-site testing and inspection activities and prior to on-site Mobilization for demolition and construction, prepare a Mobilization Plan for the City's review and approval based upon information provided to the Design/Builder by the City from time to time concerning the anticipated availability of the Site or portions thereof for tests and inspections to be performed in connection with the preparation of the Order of Magnitude Documents, for remedial work relating to Hazardous Materials and Waste as set forth

in Exhibit N hereto, and for demolition, excavation and construction activities. The foregoing Mobilization Plan shall be revised from time to time as necessary to incorporate additional information on Site availability provided by the City. The Design/Builder shall confine operations at the Site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the Site with materials or equipment. The Design/Builder shall at all times confine its access and use of the Site to the areas designated by the City from time to time as being delivered and available to the Design/Builder.

Notwithstanding any other provision of this Article, the City acknowledges that the Schedule, as set forth in Exhibit C, was developed based on certain representations of the City regarding availability of the Site, or relevant portions thereof, at certain times, and to the extent that any or all of the Site is not available for the Design/Builder's activities on a timely basis, the Design/Builder may be entitled to an equitable adjustment in the Contract Price and/or Contract Time in accordance with provisions of Article 6 of this Agreement.

## **2.11 Patents, Trademarks, Copyrights**

The Design/Builder shall pay, at no additional cost to the City, all applicable royalties and license fees on any and all matters arising in connection with the Work. The Design/Builder shall defend all suits or claims for infringement of patent, trademark, and copyrights against the City and any other Indemnified Parties, and shall save the City and any other Indemnified Parties harmless from loss on account thereof for any and all matters arising in connection with the Work on the Project, such costs to be paid at no additional cost to the City, except with respect to any particular design process or the product of a particular manufacturer or manufacturers specified and required by the City, other than pursuant to the recommendation or suggestion of the Design/Builder; provided however, if the Design/Builder has reason to believe that the design, process or product so specified is an infringement of a patent, the Design/Builder shall be responsible for any loss resulting unless the Design/Builder has provided the City with prompt written notice of the Design/Builder's belief, and the City has nevertheless elected to go forward with such design, process or product so specified.

**2.12 Rubbish; Debris; Cleanup** During the performance of all on-site Work, the Design/Builder shall at all times, at no additional cost to the City, keep the Site and adjacent streets, properties and sidewalks reasonably free from waste materials, debris and/or rubbish, and shall employ adequate dust control measures. If accumulation of such materials, debris, rubbish or dust constitutes a nuisance or Safety hazard or is otherwise objectionable in the reasonable opinion of the City, the Design/Builder shall promptly remove them. Upon Substantial Completion of the Work, or any portion or component thereof, the Design/Builder shall remove from the Site, or applicable portion thereof, all tools, construction equipment, machinery, surplus materials, waste materials and rubbish and shall leave the Site in a "broom clean" condition. If the Design/Builder fails to clean up as provided in the Contract Documents, the City may do so and the cost thereof shall be charged to the Design/Builder through a reduction in the Contract Price.

### **2.13 Permits, Fees and Notices**

Unless otherwise provided in the Contract Documents or unless designated a Governmental Approval in Exhibit E hereto, and subject to the provisions of Article 2.5 hereof, the Design/Builder shall secure and pay, as part of the Contract Price, for all permits, governmental fees, licenses and inspections necessary for the proper execution and completion of the Work. To the extent there is a change in the type or cost of any of such permits, fees, licenses or inspection occurring after execution of this Agreement, there shall be an equitable adjustment in the Contract Price and Contract Time on account of such change in accordance with the provisions of Article 6 of this Agreement. The Design/Builder shall comply with and give notices required by Applicable Laws.

**2.13.1** The Design/Builder will not be entitled to damages or additional payment for delays attributable to the acquisition of permits.

**2.13.2** The Design/Builder may be given a no cost extension of time for unforeseen delays attributable to the acquisition of permits.

**2.13.3 Regulatory and Court Imposed Costs.** The Design/Builder agrees to pay, or reimburse the City for regulatory or court imposed fees, fines, or

penalties imposed on the City arising from the Design/Builder's failure to complete the Work in a timely manner and / or in accordance with the Contract Documents. The Design/Builder's responsibility and obligation to pay, or reimburse the City for these fees, fines, or penalties shall be in addition to the assessment of liquidated damages for late completion of the Work.

### **2.14 Shop Drawings, Product Data and Samples**

**2.14.1 Documents and Samples at the Site.** The Design/Builder shall maintain at the Site for the City one record copy of the Contract Documents, drawings specifications, Addenda, Change Orders, and Construction Documents and any Change Orders thereto in good order and marked to record changes and selections made during the Design Phase and Construction Phase. In addition, the Design/Builder shall maintain at the Site approved Shop Drawings, Product Data, Samples and similar required submittals. The Design/Builder shall also prepare one reproducible set of as-built drawings. These shall be provided to the City upon completion of the Work.

### **2.14.2 Shop Drawings, Product Data and Samples.**

**2.14.2.1** Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of these submittals is to demonstrate for those portions of the Work for which submittals are required the way the Design/Builder proposes to conform the construction to the Construction Documents.

**2.14.2.2** The Design/Builder shall review and take appropriate action upon Shop Drawings, Product Data, Samples and similar submittals. The City has determined that it does not wish to review Shop Drawings, Product Data, Samples and similar submittals. If at a later date, the City wishes to review any such Shop Drawings, Product Data, Samples and similar submittals, it shall give reasonable prior notice to the Design/Builder, and shall conduct such review so as not to delay the Work. The procedures for review are outlined in Supplementary General Conditions.

**2.14.3 Responsibility.** The Design/Builder shall not be relieved of responsibility for the deviations

from requirements of the Contract Documents by the City's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Design/Builder has specifically informed the City of such deviation at the time of the submittal and the City has given written approval to the specific deviation. The Design/Builder shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the City's approval thereof.

## **2.15 Tests and Inspections**

### **2.15.1 Required Tests and Inspections.**

Tests, inspections and approvals of portions of the Construction Work required by these Contract Documents, Applicable Laws or normal construction practices shall be made at an appropriate time, and as specified in the Statement of Work. Unless otherwise provided, the Design/Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the City, or with the appropriate public authority, and the costs of such tests, inspections and approvals shall be a part of the Contract Price. The Design/Builder shall give the City timely notice of when and where tests and inspections are to be made so that the City may observe such procedures. All costs of tests, inspections or approvals imposed upon the Design/Builder by Applicable Laws which do not become requirements until after execution of the Agreement shall be an increase to the Contract Price in accordance with the provisions of Article 6 of this Agreement.

### **2.15.2 Additional Tests and Inspections.**

If the City or public authorities having jurisdiction determine that portions of the Construction Work require additional testing, inspection or approval beyond that required by Article 2.15.1, the City will instruct the Design/Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the City, and the Design/Builder shall give timely notice to the City of when and where tests and inspections are to be made so the City may observe such procedures. If such additional tests and/or inspections reveal failure of the portions of the Work to comply with the requirements of the Contract Documents, the costs of such tests and required correction shall be paid at no additional cost to the City. If the additional tests and/or inspections show

that the portions of the Work comply with the requirements of the Contract Documents, the costs thereof shall be an increase to the Contract Price in accordance with the provisions of Article 6 of this Agreement.

**2.15.3 Required Certificates.** Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Design/Builder and promptly delivered to the City.

**2.15.4 Timing of Testing.** Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

## **2.16 Execution, Correlation and Intent**

**2.16.1 Execution of Agreement.** Execution of this Agreement by the Design/Builder is a representation that the Design/Builder has visited the Site, become familiar with the local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

**2.16.2 Intent of Contract Documents.** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Design/Builder. The Contract Documents are complementary and what is required by one shall be as binding as if required by all; performance by the Design/Builder shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

**2.16.3 Assignment of Agreement.** The Design/Builder shall not assign, sublet, sell, transfer, or otherwise dispose of the Contract or any portion thereof, or its right, title, or interest therein, or obligations thereunder, without the written consent of the City except as imposed by law. If the Design/Builder violates this provision, the Contract may be terminated at the option of the City. In such event, the City shall be relieved of all liability and obligations to the Design/Builder and to its assignee or transferee, growing out of such termination.



**2.16.4 Organization of Materials.**

Organization of the Design Materials into divisions, sections and articles pursuant to Construction Specifications Institute Standards, and arrangement of drawings shall not control the Design/Builder in dividing the Construction Work among Subcontractors or in establishing the extent of Construction Work performed by any trade.

**2.16.5 Meaning of Words.**

Unless otherwise stated in this Agreement, words which have well-known technical or construction industry meanings are used in accordance with such recognized meanings.

**2.17 Labor and Materials; Liens and Stop Notices.**

Unless otherwise provided in the Contract Documents, the Design/Builder shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The Design/Builder shall enforce strict discipline and good order among the Design/Builder's employees and other persons carrying out the Work. The Design/Builder shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

In the event that any Subconsultants, Subcontractors, laborer, material Supplier, or any other person places a lien or stop notice on the Project covering any portion of the Work for which the City has made payment to the Design/Builder, the Design/Builder will satisfy, discharge or bond such lien or stop notice within ten (10) Days after written notice from the City of the existence of such lien or stop notice. City shall withhold payment according to Applicable Laws.

**2.18 Cutting and Patching.****2.18.1 Cutting and Patching of the Work.**

The Design/Builder shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

**2.18.2 Damage to Work of City or**

**Separate Contractors.** The Design/Builder shall not damage or endanger a portion of the Work or fully or partially completed construction of the City, third Parties, or Separate Contractors by cutting, patching or otherwise altering such construction, or by excavation. The Design/Builder shall not cut or otherwise alter such construction by the City or a Separate Contractor except with written consent of the City and of such Separate Contractor, such consent not to be unreasonably withheld. The Design/Builder shall not unreasonably withhold consent from the City or a Separate Contractor with respect to cutting or otherwise altering the Work.

**2.19 Uncovering of Construction Work****2.19.1 Uncovering of Work Request to be**

**Observed.** If a portion of the Construction Work is covered contrary to the City's written request, such notice to be given in sufficient time in advance so as not to delay the Construction Work, or to requirements of the Contract Documents, it must, if required in writing by the City, be uncovered for the City's observation and be replaced without change in the Contract Price or Contract Time; the costs of such uncovering and replacement shall be performed by the Design/Builder at no additional cost to the City.

**2.19.2 Uncovering of Work Not**

**Requested to be Observed.** If a portion of the Construction Work has been covered which the City has not specifically requested to observe prior to its being covered, the City may request to see such Construction Work and it shall be uncovered by the Design/Builder. If such Construction Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the City and shall increase the Contract Price. An appropriate time extension shall also be given. If such Construction Work is not in accordance with the Contract Documents, the Design/Builder shall pay such costs as part of the Contract Price, unless such condition was caused by the City or a Separate Contractor in which event the City shall be responsible for payment of such costs by appropriate Change Order in accordance with the provisions of Article 6, and an appropriate extension in Contract Time shall also be given.

## ARTICLE 3 – CITY'S DUTIES AND RESPONSIBILITIES

### 3.1. Information and Services Required of the City

**3.1.1 City Designation of Authorized Representative.** The City shall designate, from time to time, one or more representatives authorized to act on the City's behalf with respect to the Project, together with the scope of his/her respective authority. Such designations as of the date hereof are set forth in Exhibit K hereto. Functions to be performed by the City under this Agreement can be delegated by the City only by written notice to the Design/Builder from the City. Exhibit K may be amended or modified from time to time by the City pursuant to written notice to the Design/Builder. The Design/Builder shall not be entitled to rely on directions, nor shall it be required to follow directions, from anyone outside the scope of that person's authority as set forth in written delegations pursuant to this Agreement. Directions and decisions made by Authorized Representatives of the City shall be binding on the City.

**3.1.2 Communication.** During the term of this Agreement, the City shall communicate with Subconsultants, Subcontractors, Suppliers and others performing any part of the Work only through the Design/Builder's Authorized Representative(s) designated in Exhibit K hereto, as may be amended from time to time.

**3.1.3 Consent and Approval.** Whenever the City's cooperation is required by the Design/Builder in order to carry out the Design/Builder's obligations hereunder, the City agrees that it shall act in good faith in so cooperating with the Design/Builder. The City shall cooperate fully with the Design/Builder and shall furnish decisions, information, and approvals required by this Agreement in a timely manner so as not to delay the Work, provided that the City shall have no less time for review and approval than set forth in Exhibit O. Consent and approval by the City shall create no warranty by City as to the correctness or sufficiency of the object of such approval.

**3.1.4 Governmental Approvals.** The City shall be responsible for obtaining the Governmental Approvals set forth in Exhibit E hereto.

Any delay in obtaining the Governmental Approvals which materially affects the approved Schedule as set forth in Exhibit C may entitle the Design/Builder to an equitable adjustment in the Contract Price and Contract Time if the Design/Builder demonstrates the delay has resulted in time or cost impacts in accordance with the provisions of Article 6 of this Agreement. No equitable adjustment shall be due in the event such delay is due to the fault or neglect of the Design/Builder, or where there is concurrent delay by the Design/Builder.

### 3.2 Activities on the Site by City or Separate Contractors

**3.2.1 City's Right to Award Separate Contracts.** The City reserves the right to perform work or operations outside the Scope of Work of this Agreement related to the Project, with the City's own forces, and/or to award separate contracts to Separate Contractors in connection with other portions of the Project.

**3.2.2 Integration of the Work with Separate Contractors.** Following the request of the City, the Design/Builder shall prepare a plan in order to integrate the work performed by Separate Contractors with the performance of the Work, and shall submit such plan to the City for approval. The plan shall be fair and reasonable for the Design/Builder and the Separate Contractors, and the Design/Builder shall work with the Separate Contractors to reach agreement on such plan. The Design/Builder shall arrange the performance of the Work so that the Work and the work of the Separate Contractors are, to the extent applicable, properly integrated, jointed in an acceptable manner, and performed in the proper sequence so that any disruption or damage to the Work or to any work of Separate Contractors is avoided.

**3.2.3 Coordination.** The Design/Builder shall provide for the coordination of the activities of the Design/Builder and its Subconsultants and Subcontractors with the activities of the Separate Contractors. The Design/Builder shall participate with all Separate Contractors and the City in reviewing and coordinating the schedules of the Separate Contractors with the Schedule. The Design/Builder shall make any revisions to the Schedule deemed necessary to properly incorporate the work of the Separate Contractors with

the Work. To the extent (a) the date of Substantial Completion is extended by such Schedule revision; (b) the Design/Builder is required to perform its Work materially out of sequence, and in a manner which is not as efficient or cost effective as originally planned; or (c) the Scope of Work is increased, an equitable adjustment in the Contract Price and the Contract Time shall be made in accordance with the provisions of Article 6 of this Agreement.

**3.2.4 Use of Site.** The Design/Builder shall afford the City and all Separate Contractors reasonable opportunity for storage of materials and equipment and performance of their work. The Design/Builder shall also connect and coordinate its Work and operations with the City and all Separate Contractors' operations as required by the Contract Documents. The City shall direct the Separate Contractors to cooperate with the Design/Builder and to avoid actions or omissions which could interfere with or delay the activities of the Design/Builder.

**3.2.5 Deficiency in Work of Separate Contractors.** If part of the Design/Builder's Work depends on proper execution or results upon construction or operations by the City or a Separate Contractor, the Design/Builder shall, prior to proceeding with that portion of the Work, promptly report to the Separate Contractor and the City apparent discrepancies or defects in such other construction that would render it unsuitable for proper execution and results by the Design/Builder. The Design/Builder and the Separate Contractor shall use good faith efforts to resolve any such discrepancies or defects or any disagreements relating thereto. Failure of the Design/Builder to report shall constitute acceptance by the Design/Builder of the work of Separate Contractors as fit, proper, and coordinated with the Design/Builder's Work. If such deficiencies were not reasonably apparent such as to provide the City with a cause of action against the Separate Contractor, Design/Builder shall accept City's assignment of that cause of action.

**3.2.6 Claims Involving Separate Contractors.** The Design/Builder shall defend and indemnify the City and each Separate Contractor against any and all damages or Claims that have alleged to have arisen from the acts or omissions of the Design/Builder's obligations hereunder, the costs of which shall be part of the Contract Price. In the event

that the Design/Builder unnecessarily and unreasonably delays the work of Separate Contractors by not cooperating with them as required hereby, or by not affording them reasonable opportunity to perform their work as stated herein, the Design/Builder shall, in such event, pay, as part of the Contract Price, all reasonable direct incremental costs and expenses incurred by such Separate Contractors due to any such delays. If any Separate Contractor shall assert a Claim or bring an action against the City alleging damage due to the fault or neglect of the Design/Builder, the City shall immediately notify the Design/Builder, who shall defend such Claim. The Design/Builder shall pay all costs of defense, including attorney's fees, as well as any resulting judgment or settlement, at no additional cost to the City.

**3.2.7 Delays Caused by Separate Contractors.** In the event that any Separate Contractor unnecessarily and unreasonably delays the Work by not cooperating with the Design/Builder, or by not affording the Design/Builder reasonable opportunity to perform the Work as stated herein, the City shall, in such event, pay all reasonable direct incremental costs and expenses incurred by the Design/Builder due to any such delays pursuant to the provisions of Article 6 of this Agreement.

### **3.3 Assignment of Separate Contracts**

If the City determines that it is in the City's best interest to assign to the Design/Builder one or more contracts between the City and the Separate Contractor, the City shall give the Design/Builder written notice of such intent, including in such notice a copy of such contract for the Design/Builder's review and approval. The Separate Contractor shall provide one hundred percent (100%) Payment and Performance Bonds covering such work from sureties meeting the standards set forth in Articles 1.79 and 9.1.2 hereof. Such contract shall contain provisions similar to those contained in the Design/Builder's agreements with its Subconsultants and Subcontractors with respect to liability, indemnification, Retention, payment, labor and other material items. Upon the Design/Builder's approval of the assignment of such contract, which approval shall not be unreasonably withheld, delayed or conditioned, such Separate Contractor shall cease to be a Separate Contractor and shall thereafter be deemed to be a Subcontractor of the Design/Builder, and the Contract Price shall be

increased by Change Order in the amount of (a) such assigned contract, and (b) additional Fee pursuant to the provisions of Article 6.6.1.

### 3.4 City's Right to Stop the Work

If the Design/Builder fails to correct Work which is not in accordance with the requirements of the Contract Documents and this Agreement or fails to carry out the Work in accordance with the Contract Documents, the City, by written order signed by the City, may deliver a notice to the Design/Builder setting forth that such a material failure is occurring and has occurred, and demanding that the Design/Builder commence a cure of such material failure within twenty (20) Days and diligently pursue such cure thereafter. In the event that the cure is not immediately commenced and pursued diligently, the City may, by written notice to the Design/Builder, order the Design/Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; provided, however, that the right of the City to stop the Work shall not give rise to a duty on the part of the City to exercise this right for the benefit of the Design/Builder or any other person or entity and shall not give rise to any liability of the City to the Design/Builder resulting from any delay.

### 3.5 City's Right to Carry Out the Work

If the Design/Builder Defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven (7) Day period after receipt of written notice from the City to commence and diligently continue correction of such Default or neglect with diligence and promptness, City may after such seven (7) Day period give the Design/Builder a second written notice to correct such deficiencies within such second seven (7) Day period. If the Design/Builder within such second seven (7) Day period after receipt of such second notice fails to commence and diligently continue to correct any deficiencies, the City, without prejudice to other remedies the City may have, may correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due to the Design/Builder the cost of correcting such deficiencies, including compensation for services and expenses made necessary by such Default, neglect or failure. If payments then or thereafter due to the Design/Builder are insufficient to

cover such amounts, the Design/Builder shall pay the difference to the City.

## ARTICLE 4 – TIME

### 4.1. Progress and Completion

**For all time limits and all Agreement Milestones stated in the Contract Documents, “time is of the essence.”** By executing the Agreement, the Design/Builder confirms that the Contract Time provided in the Supplementary General Conditions is a reasonable time for achieving Substantial Completion and Final Completion of the Work.

### 4.2 Schedule Obligations

**4.2.1 Contract Schedule.** The planning, design, construction and completion of the Project shall be undertaken and completed in accordance with the Schedule, which shall define major design and construction activities, their sequences and elapsed completion time from the date of the Notice to Begin Design. The Schedule and/or the Contract Time shall not be modified except by a Change Order as provided for in Article 6 of this Agreement.

**4.2.2 Prosecution of the Work.** The Design/Builder shall prosecute the Work so that the portion of the Work completed at any point in time shall be not less than as required by the Schedule. If the rate of progress is such that the total amount of Work and/or the degree of completion of the Project accomplished by the Design/Builder within any time period required by the Schedule is less than the amount therein specified, the Design/Builder shall so notify the City. If the delay is an Unexcused Delay, the Design/Builder shall prepare a recovery schedule for the City's review and approval, showing how the Design/Builder will compensate for the delays and achieve Substantial Completion by the date shown on the Schedule. If the Design/Builder is unable to demonstrate how it will overcome Unexcused Delays, the City may direct the Design/Builder to employ such extraordinary measures as are necessary to bring the Work into conformity with the Substantial Completion Date set forth therein, the costs of which shall be paid as part of the Contract Price at no additional cost to the City. If the delay is an Excusable Delay, the City shall either (a) authorize an equitable extension in the Contract Time to account for such delay, and equitably

adjust the Contract Price on account of such delay, to the extent permitted by Article 6; or (b) request that the Design/Builder prepare a recovery schedule showing how, if possible, the Design/Builder can achieve Substantial Completion by the date shown on the Schedule, and equitably adjust the Contract Price in accordance with the provisions of Article 6 of this Agreement on account of any extraordinary activities required of the Design/Builder on account of such recovery schedule.

#### 4.3 Preconstruction Activities

Upon execution of this Agreement and within time specified in the Supplementary General Conditions, the Design/Builder shall submit to the City for review a detailed schedule of preconstruction activities, by expanding the preconstruction activities set forth on the Schedule. This preconstruction schedule shall be prepared using the CPM, and shall show in sufficient detail the starting and completion time sequences of design and Subcontract award activities of the Design/Builder, and identify all interface activities of the City.

#### 4.4 Critical Path Activities

To the extent the Design/Builder completes activities on the critical path earlier than scheduled; the savings in time on account thereof shall belong solely to the Project. In no event shall the Design/Builder be entitled to an increase in the Contract Price for any delay that occurs prior to the originally scheduled date of Substantial Completion.

#### 4.5 Construction Activities

Upon execution of this Agreement and within time specified in the Supplementary General Conditions, the Design/Builder shall submit to the City for review a detailed construction schedule that is consistent with the Schedule. At such time as the Construction Documents are ready to be bid, the Design/Builder shall submit to the City for incorporation into the Contract Documents, a revised construction schedule, which will further detail the construction schedule approved to date, but which will not, in and of itself, change the date of Substantial Completion or the Final Completion of the Project. This revised construction schedule shall be based upon a CPM and shall show in complete detail starting and

completion time of detail activities of each of the various trades, the sequence of the Work and all significant activities.

#### 4.6 Extensions of Time

**4.6.1 General.** An extension in the scheduled date of Substantial Completion will only be granted in the event of Excusable Delays affecting Work activities on the critical path.

**4.6.2 Excusable Delays.** To the extent any of the following events results in an actual delay in the Work affecting Work activities on the critical path, such shall constitute an "Excusable Delay", to the extent not set forth below, a delay will be considered an "Inexcusable Delay":

**4.6.2.1** Failure or inability of the City to make available any or all of the Site in accordance with the requirements of the Schedule.

**4.6.2.2** Failure or inability of the City or the Design/Builder to obtain necessary zoning changes, variances, code changes, permits or approvals from any governmental authority, or failure to obtain any street or alley vacations required for the performance of the Work, except to the extent due to the fault or neglect of the Design/Builder.

**4.6.2.3** Delays resulting from the acts or omissions of Separate Contractors, except to the extent Separate Contractors perform their work properly and in accordance with the Design/Builder's schedules.

**4.6.2.4** Delays resulting from Force Majeure.

**4.6.2.5** Differing, unusual or concealed site conditions that could not reasonably have been anticipated by the Design/Builder in preparing the Schedule.

**4.6.2.6** Delays resulting from the existence or discovery of Hazardous Materials or Waste on the Site not brought to the Site by the Design/Builder.

**4.6.2.7** Delays resulting from changes in Applicable Laws occurring after the date of execution of this Agreement;

**4.6.2.8** Delays occurring due to the acts or omissions of the City and those within the control of the City, including, but not limited to, Separate Contractors.

**4.6.2.9** Delays resulting from City-mandated suspensions of Work.

**4.6.3 Requirements for Schedule Change Order Due to Excusable Delays.** In order to obtain an extension of time due to an Excusable Delay, the Design/Builder shall comply with the following requirements:

**4.6.3.1** The Design/Builder shall notify the City of the Excusable Delay as soon as practicable, but in no event more than seven (7) Business Days after the Design/Builder becomes aware of the occurrence of the Excusable Delay. Such notice shall describe the Excusable Delay and shall state the approximate number of Days the Design/Builder expects to be delayed. After the cessation of the Excusable Delay, the Design/Builder shall notify the City of the number of Days the Design/Builder believes that its activities were in fact delayed by the Excusable Delay. In the event that the delay arises as a result of a Change Order request by the City, the request for an extension of time contained in the resulting Change Order Proposal shall be deemed sufficient for purposes of this Article.

**4.6.3.2** Subject to the provisions of Article 4.4, the Design/Builder shall demonstrate to the satisfaction of the City that, in fact, the Excusable Delay delayed the critical path for performance of the Work, by use of CPM analysis.

**4.6.4 Decision by City.** Within thirty (30) Days after cessation of an event giving rise to either an Excusable Delay or Inexcusable Delay, the Parties will use good faith efforts to agree on the extent to which the Work has been delayed and whether the delay is an Excusable Delay or an Inexcusable Delay. If the Parties fail to agree as to the then current status of Excusable Delays and Inexcusable Delays, the City will provide the Design/Builder with written notice of the City's determination of the respective number of Days of Excusable Delay and/or Inexcusable Delay within ten (10) Days after receipt by the City of the Design/Builder's written request for such determination. The issuance by the City of such a

determination shall not, however, be deemed a concurrence by the Design/Builder of the matters set forth therein, and the Design/Builder may invoke the dispute resolution procedures as set forth in Article 11 of this Agreement with respect to such determination. Pending completion of dispute resolution procedures as set forth in Article 11 of this Agreement, the Design/Builder may take such accelerated performance or take other measures to recover from the delays, and if completion of the dispute resolution procedures as set forth in Article 11 of this Agreement results in the City's determination being changed to Excusable Delay, the costs associated with such measures shall be paid by the City as an increase to the Contract Price in accordance with the provisions of Article 6 of this Agreement.

#### **4.7 Adjustment in Contract Price on Account of Extensions of Time.**

**4.7.1 Certain Excusable Delays.** Article 4.6 governs the extent to which the Design/Builder is entitled to an extension of time due to Excusable Delays. Provisions regarding compensation on account of such Excusable Delays are set forth in Article 5.1.2 and Article 6.

**4.7.2 Concurrent Delays.** To the extent the Design/Builder is entitled to an extension of time due to an Excusable Delay, but the performance of the Work would have been suspended, delayed or interrupted by the concurrent fault or neglect of the Design/Builder or by an Inexcusable Delay, the Design/Builder shall not be entitled to any additional costs for the period of such concurrency.

#### **4.8 Liquidated Damages**

**4.8.1 General.** The Design/Builder and the City acknowledge that in the event that the Design/Builder fails to achieve Substantial Completion of the Project by the date established in the Schedule, as adjusted by Change Order, the City will incur substantial damages and the extent of such damages is and will continue to be very difficult to accurately measure. Nonetheless, the Parties acknowledge that on the date of this Agreement, the amount of Liquidated Damages set forth below represents a good faith estimate as to the actual potential damages that the City would incur as a result of late Substantial Completion of the Project except as provided in

Section 2.13.3. Such Liquidated Damages shall be the sole and exclusive remedy of the City for late Substantial Completion of the Project, and the City hereby waives all other remedies available at law or in equity with respect to losses resulting from late Substantial Completion. The amount of the Liquidated Damages calculated hereunder does not include any penalty.

#### 4.8.2 Amount of Liquidated Damages.

If the Design/Builder fails to achieve Substantial Completion of the Work on or before the date of Substantial Completion set forth in the Schedule, as adjusted by Change Order, for any reason other than Excusable Delays, the Design/Builder shall pay to the City Liquidated Damages in the amount specified in the Supplementary General Conditions for each Day the date of Substantial Completion is delayed beyond the date of Substantial Completion set forth in the Schedule. Payment of Liquidated Damages shall be made contemporaneously with the City's required payment to the Design/Builder at Substantial Completion, and such payments may be offset against each other. If amounts due to be paid to the Design/Builder are insufficient to offset assessed Liquidated Damages, the Design/Builder shall promptly pay the difference to the City. Notwithstanding such offset, the Design/Builder reserves the right to challenge its liability for Liquidated Damages pursuant to the dispute resolution procedures as set forth in Article 11 of this Agreement.

**4.8.3 Late Final Completion.** In the absence of stipulated Liquidated Damages as defined in Article 4.8.2 above, damages incurred by the City as a result of Design/Builder's delays in reaching Final Completion or by its City's Separate Contractors, shall be recoverable by the City on the basis of actual damages.

### ARTICLE 5 – PAYMENT AND COMPLETION

#### 5.1 Contract Price

**5.1.1 Contract Price.** The City shall pay the Design/Builder in current funds for the Design/Builder's performance of this Agreement the Cost of the Work as defined in Exhibit D subject to adjustments made in accordance with the Contract Documents. Unless otherwise provided in the Contract Documents, the Contract Price is deemed to

include all taxes, use, consumer and other taxes mandated by applicable Legal Requirements. *The stipulated allocation of such price for Design Work shall not exceed eight percent (8%) of the Contract Price set forth above.*

**5.1.2 Markups for Changes.** If the Contract Price requires an adjustment due to changes in the Work, and the cost of such changes is determined under Article 6 of the Contract Documents, the following markup, for overhead and profit, shall be allowed on such changes and will apply to changes which increase or decrease the Contract Price:

	<u>Overhead</u>	<u>Profit</u>
*Labor =	10 %	10 %
*Materials =	10 %	5 %
*Equipment =	10 %	5 %
* To the sum of the costs and markups provided for in this Article, actual costs up to one percent (1%) shall be added as compensation for bonding.		

The foregoing markups shall constitute full compensation to the Design/Builder for extended field overhead, home office overhead, non-labor personnel expense, management, coordination, and all other elements of indirect expense not subsumed as labor, materials, equipment, and bond.

#### 5.2 Schedule of Values

Within ten (10) Days of execution of this Agreement, Design/Builder shall submit for City's review and approval a schedule of values for all of the Work. The schedule of values will (i) subdivide the Work into its respective parts, (ii) include values for all items comprising the Work and (iii) serve as the basis for monthly progress payments made to Design/Builder throughout the Work.

#### 5.3 Applications for Payment

The Design/Builder shall deliver to the City on the last Business Day of each month an Application for Payment covering the Work performed during such month in a format acceptable to the City. Provided an undisputed and properly submitted Application for

Payment is received by the City, payment shall be made by the City not later than thirtieth (30th) Day after the City receives the Application for Payment. With each Application for Payment the Design/Builder shall submit such evidence as may be necessary to demonstrate costs incurred or estimated to be incurred during such month and the percentage of completion of each category of Work. Any payment request that is disputed or determined to be improper, or for defective, suspended, or terminated Work shall be returned to the Design/Builder not later than seven (7) Days, as set forth in Public Contract Code 20104.50, after receipt accompanied by documentation describing the reason(s) why the payment request is not proper.

#### **5.4 Amount of Progress Payments**

The City shall pay the Design/Builder for all Work performed, including payment for off-site stored materials, through the period covered by the Application for Payment, less Retention as set forth in Article 5.5 below, provided that the payment amount before Retention will not exceed the percentage of completion of the Work, all as set forth in the schedule of values.

#### **5.5 Retention**

**5.5.1** With respect to premiums for Bonds and insurance, no Retention shall be withheld.

**5.5.2** With respect to Design Work, 10% Retention shall be withheld from all Application for Payment. All Retention attributable to Design Work shall be fully released within thirty (30) Days of acceptance of the Design Work by the City.

**5.5.3** With respect to Construction Work, From each progress estimate, five percent (5%) will be withheld and retained by the City until the final completion and acceptance of the Project.

Retention on account of Construction Work shall be released thirty-five (35) Days after Final Completion or as otherwise required by Applicable Law, subject to the Design/Builder's execution of a release of Claims and clearance of stop notices or other proper bases of withholding.

#### **5.6 Early Release of Subcontractor Retention**

If a Subcontractor has completed its portion of the Work, including all Punch List items, pursuant to any given Subcontract, the Design/Builder may request the City to disburse the Retention allocable to such Subcontractor, after delivering to the City acceptable releases from the Subcontractor and consent to such disbursement from such Design/Builder's Surety, in a form reasonably satisfactory to the City. The City, at its sole discretion, may determine that the Subcontractor's Work has been completed in accordance with the Contract Documents, and may disburse the Subcontractor's share of Retention to the Design/Builder for distribution to the Subcontractor. Regardless of whether the City has disbursed Retention for the benefit of any Subcontractor, the one year warranty period with respect to such Work shall commence at Substantial Completion of the Work.

#### **5.7 Escrow of Retention from Payments**

The Design/Builder may elect to receive one hundred percent (100%) of payments due under the Contract Documents from time to time, without Retention of any portion of the payment by the City, by depositing securities of equivalent value with the City in accordance with the provisions of Section 22300 of the Public Contract Code. Such securities, if deposited by the Design/Builder, shall be valued by the City, whose decision on valuation of the securities shall be final. Securities eligible for investment under this provision shall be limited to those listed in Section 16430 of the Government Code, bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the Design/Builder and the City.

#### **5.8 Payment for On-Site and Off-Site Stored Materials**

Payment shall be made on account of materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work at the sole discretion of the City. Payment may similarly be made for materials and equipment suitably stored off the Site, conditioned upon the Design/Builder furnishing evidence to the City that (a) title to the materials and equipment will pass to the City upon payment therefore; (b) the materials and equipment are adequately insured; and (c) such other matters as the



City may reasonably request in order to protect its interests.

## 5.9 Title to Construction Work

The Design/Builder warrants that title to all Construction Work covered by an Application for Payment shall pass to the City no later than the time of payment. This provision shall not affect the Design/Builder's responsibilities for protection and insurance of the work in place. The Design/Builder further warrants that upon submittal of an Application for Payment, all Construction Work for which Applications for Payment have been previously issued and payments received from the City shall, to the best of the Design/Builder's knowledge, information and belief, be free and clear of liens, Claims, security interests or encumbrances in favor of the Design/Builder, Subconsultants, Subcontractors, material Suppliers, or other persons or entities making a Claim by reason of having provided labor, materials and equipment relating to the Construction Work.

## 5.10 Withholding of Payment

The City may withhold payment on account of an Application for Payment to the extent necessary to protect the City from loss because of:

**5.10.1** Defective or incomplete Work not remedied;

**5.10.2** Third Party Claims filed or reasonable evidence indicating probable filing of such Claims;

**5.10.3** Failure of the Design/Builder to make payments of undisputed amounts to Subconsultants or Subcontractors for labor, materials or equipment;

**5.10.4** Damage to the City or a Separate Contractor caused by the fault or neglect of the Design/Builder to the extent not covered by insurance; or

**5.10.5** Reasonable evidence that the Work will not be Substantially Completed within the Contract Time due to Inexcusable Delay, and that the unpaid balance of the Contract Price would not be

adequate to cover Liquidated Damages for the anticipated or actual Unexcused Delay.

**5.10.6** Stop notices, wage orders, or other withholdings required by Applicable Law.

When all the above reasons for withholding payment are removed, payment shall be made for amounts previously withheld. Prior to any withholding pursuant to this Article, the City shall meet with the Design/Builder to discuss potential withholding, and attempt in good faith to resolve such issue without the need for withholding.

## 5.11 Failure of Payment; Interest

Interest on untimely payments for Disputed Work shall be subject to resolution of that dispute and according to Applicable Law, provided however that accrual of interest shall not begin before the Design/Builder has submitted a certified Claim pursuant to Article 11.

## 5.12 Substantial Completion

Substantial Completion shall not be deemed to have been achieved until the City certifies the satisfactory completion of the start-up period, as specified in the Supplementary General Conditions, performed by the Design/Builder. When the Design/Builder considers that the Work, or a portion thereof which the City agrees to accept separately, is Substantially Complete, the Design/Builder shall prepare and submit to the City a comprehensive list of Punch List items. The Design/Builder shall proceed promptly to complete and correct Punch List items. Failure to include an item on the Punch List does not alter the responsibility of the Design/Builder to complete all Work in accordance with the Contract Documents. Upon receipt of the Punch List, the City will make an inspection to determine whether Substantial Completion has occurred. The Certificate of Substantial Completion shall state the date of Substantial Completion and shall be executed by the City and the Design/Builder. If the City and the Design/Builder cannot agree as to the appropriate date of Substantial Completion, such issue shall be submitted for dispute resolution in accordance with the procedures set forth as set forth in Article 11 of this Agreement. Notwithstanding such disagreement, the Design/Builder shall diligently proceed with completion of the Punch List items. Warranties required by the Contract Documents shall commence on the date of Substantial Completion or designated

portion thereof unless otherwise provided in the Contract Documents.

### **5.13 Partial Occupancy or Use**

The City may occupy or use any completed or partially completed portion of the Construction Work at any stage when such portion is designated by separate agreement with the Design/Builder, provided such occupancy or use is consented to by the insurer of the Project and authorized by public authorities having jurisdiction over the Construction Work. Such partial occupancy or use may commence whether or not the portion is Substantially Complete, provided the City and the Design/Builder have accepted in writing the responsibilities assigned to each of them for payment, security, maintenance, heat, utilities, damage to the Construction Work and insurance, and have agreed in writing concerning the period for correction of the Construction Work and commencement of warranties required by the Contract Documents. Immediately prior to such occupancy, the City and the Design/Builder shall jointly inspect the area to be occupied in order to determine and record the condition of the Construction Work. Unless otherwise agreed, partial occupancy or use of a portion of the Construction Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents, and will not be considered for purposes of Substantial Completion or Liquidated Damages.

### **5.14 Final Completion and Final Payment**

**5.14.1 Final Completion.** When the Design/Builder considers that the Work is Finally Complete, the Design/Builder shall so notify the City. The Notice of Completion Certification shall set forth the date of Final Completion and shall be executed by the City and the Design/Builder. If the City and the Design/Builder cannot agree as to the appropriate date of Final Completion, such issue shall be submitted for dispute resolution in accordance with the procedures set forth in Article 11 of this Agreement.

**5.14.2 Conditions Precedent to Final Payment.** Neither Final Payment nor any final release of Retention shall become due until the Design/Builder submits to the City:

**5.14.2.1** an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the City or the City's property might be responsible or encumbered, less amounts withheld by the City, have been paid or otherwise satisfied;

**5.14.2.2** a certificate evidencing that insurance required by the Contract Documents to remain in force after Final Payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) Days' prior written notice has been given to the City;

**5.14.2.3** Consent of Surety to Final Payment; and

**5.14.2.4** If required by the City, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract Documents. If a Subconsultant or Subcontractor refuses to furnish a release or waiver required by the City, the Design/Builder may furnish a bond satisfactory to the City to indemnify the City against such lien.

**5.14.2.5** Design/Builder has completed all Work, including but not limited to providing required, as-built drawings, operations manuals, test reports, UL labels, and other similar documentation as determined by the City.

**5.14.3 Delay in Final Completion.** If after Substantial Completion of the Work, Final Completion is materially delayed through no fault of the Design/Builder or by the issuance of additional Change Orders or Work Change Directives by the City, the City shall, upon request of the Design/Builder, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed. If the remaining balance for Work not fully completed is less than the Retention, and if Bonds have been furnished, the written consent of Surety to payment of the balance due for that portion of the Work fully completed shall be submitted by the Design/Builder to the City, and such payment shall be made under the terms and conditions governing Final Payment, except that it shall not constitute a waiver of Claims by either the Design/Builder or the City.

**5.14.4 Waiver of Claims at Final Payment**

**5.14.4.1 Acceptance of Final Payment** by the Design/Builder shall constitute a waiver of affirmative Claims by the Design/Builder, except those previously made in writing and identified as unsettled at the time of Final Payment, which are expressly reserved by the Design/Builder from operation of its Release of Claims pursuant to PCC7100 or other Applicable Law.

**ARTICLE 6 – CHANGES IN THE WORKS;  
CLAIMS****6.1 City's Right to Modify Work**

Without invalidating the Agreement and without notice to any Supplier, the City may at any time or from time to time, order additions, deletions or revisions in the Work; these will be authorized by a written Change Order or Work Change Directive prepared and issued by the City. Upon receipt of any such document, the Design/Builder shall promptly proceed with the work involved which will be performed under the applicable conditions of the Contract Documents except as otherwise specifically provided.

**6.2 Changes**

Changes in the Work shall be performed under this Article and the Design/Builder shall proceed promptly, unless otherwise provided in the Change Order or Work Change Directive. If unit prices are stated in the Contract Documents and if actual quantities required are not in the allowable range of the stipulated quantities plus or minus the allowable variances, the applicable unit prices shall be equitably adjusted. Unit prices include the Design/Builder's profit, home and field office overhead and all direct or indirect costs unless otherwise specifically allowed hereunder.

**6.3 Work Change Directives**

The following procedures shall apply with respect to Work Change Directives:

**6.3.1** Upon receipt of a Work Change Directive signed by the City, the Design/Builder shall

promptly proceed with the change in the Work involved and advise the City of the Design/Builder's agreement or disagreement with the method used to determine the proposed adjustment in the Contract Price or the Contract Time. If the Design/Builder receives a written communication signed by the City which the Design/Builder believes is a Work Change Directive but is not so identified, the Design/Builder shall immediately notify the City but shall not proceed with the change in the Work until the Design/Builder receives from the City a written confirmation that such communication is in fact a Work Change Directive.

**6.3.2** If the Design/Builder agrees with the Scope of Work, change in the Contract Price and/or the change in Contract Time, the Design/Builder shall sign the Work Change Directive and return the original copy of the Work Change Directive to the City. A signed Work Change Directive sets the Scope of Work, the change in Contract Price, and/or the change in Contract Time to be incorporated into a subsequent Change Order.

**6.3.3** If the Design/Builder does not respond promptly or disagrees with the method for adjustment in the Contract Price or Contract Time, the method and adjustment shall be determined as provided in Articles 6.6 or 6.11 below, as applicable. In such case, the Design/Builder shall keep and present, in such form as the City may request, an itemized accounting, together with appropriate supporting data.

**6.3.4** If the City and the Design/Builder do not agree with the adjustment in the Contract Time or the Contract Price, such disagreement shall be submitted for dispute resolution in accordance with the provisions of Article 11 of this Agreement.

**6.4 Change Proposals**

If the City requests the Design/Builder to submit a Change Proposal, and the preparation of such Change Proposal impacts the Contract Time (e.g., other Work is suspended pending a decision on such Change Proposal or the Design Work is delayed due to the preparation of the Change Proposal) an equitable adjustment in the Contract Time shall be made.

**6.5 Claims**

In addition to submitting Change Proposals in response to the request of the City, the Design/Builder may submit one or more Claims in the form of Change Proposals for any requested adjustment in the Contract Price and/or Contract Time permitted pursuant to Article 11 of this Agreement.

## **6.6 Change Orders Increasing or Decreasing Scope**

**6.6.1 Increased Scope.** With respect to Change Orders which increase the Scope of Work described in Exhibit P and are not due to the errors or omissions of the Design/Builder, or are not attributable to the contingencies set forth in Article 6.7 below, or are not attributable to Excusable Delays set forth in Article 6.8 below, the Contract Price shall be increased by the following "Scope Change Costs":

### **6.6.1.1 Construction Work.**

The estimated increase in the cost of construction attributable to the Change Order, with overhead and profit as set forth in Article 5.1.2, which would not have been incurred but for the Change Order.

**6.6.1.2 Design Work.** The estimated increase in the cost attributable to the Design Work shall be determined by the sum of the actual salaries of the Architect-Engineer's personnel engaged on the Project Design Work, not including the cost of mandatory and customary contributions and benefits. Such personnel shall include engineers, architects, and technicians assigned to the Project Design Work, excluding general office employees such as accountants or general secretaries performing non-technical or nonprofessional functions. The sum of the actual salaries set forth above shall be multiplied by the Design/Builder's certified overhead rate to compensate the Design/Builder for any supplies, support, utilities all other expenses associated with the Design Work.

**6.6.2 Decreased Scope.** With respect to Change Orders which decrease the Scope of Work described in Exhibit P, the Contract Price shall be decreased by the estimated decrease in the cost attributable to the Change Order, including deductions for overhead and profit as set forth in Article 5.1.2, which would have been incurred but for the Change Order.

## **6.7 Change Orders on Account of Contingencies**

With respect to Change Orders which are attributable to the following contingencies, the Contract Price shall be adjusted by the following "Contingency Costs", consisting of the following:

**6.7.1** With respect to new or increased taxes arising after the date of this Agreement, other than taxes assessed based on the income of the Design/Builder; the Change Order shall consist of the incremental actual assessed amount of such new or increased taxes only. With respect to reductions in taxes arising after the date of this Agreement, other than taxes assessed based on the income of the Design/Builder, the Change Order shall consist of the incremental actual assessed amount of such reduced taxes only.

**6.7.2** With respect to increases or decreases in fees for permits or other governmental certificates or instruments arising after the date of this Agreement, the Change Order shall consist of the incremental amount of such increases or decreases. To the extent this Agreement states that a permit or certificate is not required and the Design/Builder is later required to procure such permit or certificate, all out-of-pocket costs associated therewith shall be included in the Change Order.

**6.7.3** With respect to the acts or omissions of Separate Contractors for which the Design/Builder is entitled to make a Claim and which do not cause a delay to the Design/Builder, the Change Order shall consist of the net increased cost relating to Construction Work which would not have been incurred but for such acts or omissions of Separate Contractors, but shall not include home office overhead, profit or fee unless recoverable by the City from such Separate Contractors.

## **6.8 Change Orders on Account of Excusable Delay**

With respect to Change Orders which are attributable to the Excusable Delays, and subject to the exceptions set forth in Article 6.8.3 below, the Contract Price shall be increased by the following "Delay Costs":

### **6.8.1 Construction Work**

**6.8.1.1** Increased allowable labor costs resulting from wage increases paid due to the delay;

**6.8.1.2** Premiums for overtime and extra shifts incurred in accelerating the Work, but only if acceleration has written approval in advance by the City;

**6.8.1.3** Documented increased material costs which would not have been incurred but for the delay;

**6.8.1.4** Additional general conditions costs which would not have been incurred but for the delay (itemized, and not based on a formula allocation such as Eichleay);

**6.8.1.5** Demobilization and remobilization costs; and

**6.8.1.6** Additional items of cost attributable to the Excusable Delay and which would not have been incurred but for the Excusable Delay.

**6.8.2 Design Work.** The Design/Builder shall not be entitled to additional overhead and profit on account of Design Work relating to Excusable Delay.

**6.8.3 Exceptions.** The following exceptions to the provisions of Article 6.8.1 above shall apply:

**6.8.3.1** With respect to the Excusable Delay described in Article 4.6.2.1, if such Excusable Delay occurs prior to the commencement of the Construction Work, Article 6.10 shall apply in lieu of Article 6.8.

**6.8.3.2** With respect to the Excusable Delay described in Article 4.6.2.2 if such Excusable Delay occurs prior to the commencement of the Construction Work, Article 6.10 shall apply in lieu of Article 6.8.

**6.8.3.3** With respect to the Excusable Delay described in Article 4.6.2.4, costs incurred in connection with such delay shall not increase the Contract Price.

**6.8.3.4** With respect to the Excusable Delay described in Article 4.6.2.5, in addition to the compensation provided in Article 6.8.1, the Design/Builder shall be entitled to the additional costs set forth in Article 6.11.

**6.8.3.5** With respect to the Excusable Delay described in Article 4.6.2.7, additional compensation shall only be paid if the change in Applicable Law is not a change in law of general application, i.e., OSHA, but is a change in law specifically affecting the Project.

## **6.9 Design Change Orders**

In the event the City revokes, modifies or otherwise changes its approval of a given system after such system has been designed and approved in accordance with the standards set forth in Article 2.4.2, the Design/Builder shall be entitled to an increase in Contract Price on account of the change Design Work equal to the cost provided for in Article 6.6.1.2.

## **6.10 Change Orders on Account of Delay in Commencement of Construction Work**

**6.10.1** In the event the commencement of the Construction Work is delayed due to the acts or omissions of any governmental authority, the Contract Price shall be increased for additional general conditions costs which would not have been incurred but for the delay and such delay has a direct impact upon the critical path of the project, as supported by a CPM schedule impact analysis (itemized, and not based on a formula allocation such as Eichleay).

## **6.11 Change Orders on Account of Differing Site Conditions**

If the Design/Builder encounters conditions described in Article 4.6.2.5 which constitute Excusable Delay, in addition to the increase in the Contract Price on account of Delay Costs incurred by the Design/Builder, as described in Article 6.8.1, the Contract Price shall also be increased by the additional direct costs attributable to such conditions which would not have been incurred but for such conditions.

## **6.12 Time Extensions on Account of Change Orders**

The Design/Builder shall be entitled to a time extension in connection with any Change Order to the extent its time of performance is extended due to such Change Order. Subject to the provisions of Article 4.4 hereof, the Design/Builder shall present to the City a CPM analysis showing how the Change Order affects the critical path of the Work. This analysis must be contemporaneous with the impact event and in no event later than 3 months after the impacting event has occurred. The analysis will use the "Impacted as Planned" method to demonstrate the impact. The Design/Builder must also evaluate action to mitigation of the impacts including but not limited to the additional crews working in parallel and use of overtime. Failure to perform this analysis in a timely fashion will result in a waiver of the Design/Builder's right to an extension of time or recovery of cost.

**6.12.1 Types of Delays Beyond The Design/Builder's Control.** Delays beyond the control of Design/Builder shall include, but not be limited to, acts or negligence by the City, acts or neglect of utility owners, fires, floods, epidemics, abnormal weather conditions, labor slowdowns and strikes, or acts of God. The Design/Builder must provide the City written notice of the potential delay within 24 hours of the occurrence.

## **ARTICLE 7 – CORRECTION OF WORK**

### **7.1 Correction of Work Prior to Completion**

Prior to the date of Substantial Completion, the Design/Builder shall correct Work, including any Design Materials, items of Construction Work, or any other part of the Work, which (a) the City rejects as being defective or nonconforming to the requirements of the Contract Documents, whether or not fabricated, installed or completed in accordance with the provisions of Article 2, in a written notice delivered to the Design/Builder or (b) the Design/Builder recognizes is defective or nonconforming to the Contract Documents. If other portions of the Work are adversely affected by or are damaged by such Defective Work, the Design/Builder shall also correct, repair or replace such affected or damaged Work, as well as any other property of the City or others damaged by such defective or nonconforming Work.

The Design/Builder shall bear the costs of correcting such rejected Construction Work, at no additional cost to the City, including additional testing and inspection and compensation for services and expenses of the City made necessary thereby. The Contract Price shall not be increased by the cost of correcting any damaged or Defective Work.

### **7.2 Correction of Work After Substantial Completion; Warranty**

If within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties under the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Design/Builder shall correct it promptly after receipt of written notice from the City to do so unless City has previously given the Design/Builder a specific written acceptance of such condition after City has been specifically informed in writing by the Design/Builder that the condition is not in accordance with the Contract Documents. This period of one year shall be extended with respect to portions of the Work first performed after Substantial Completion to one year after Substantial Completion of such Extended Work. This obligation shall survive acceptance of the Work under the Contract Documents and termination of this Agreement. The Contract Price shall not be increased by the cost of correcting Work.

### **7.3 Removal of Work**

The Design/Builder shall remove from the Site portions of the Construction Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Design/Builder nor accepted by the City. The Contract Price shall not be increased by the cost of removing Work.

### **7.4 Failure to Correct or Remove Nonconforming Work**

If the Design/Builder does not proceed with correction or removal of nonconforming Construction Work within a reasonable time fixed by written notice from the City, the City may correct and/or remove it at the Design/Builder's expense. If the Design/Builder does not pay costs of removal and storage of any salvageable materials or equipment within ten (10) Days after written notice, the City may, upon ten (10)

additional Days written notice, sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Design/Builder, including compensation for services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Design/Builder should have borne, the Design/Builder shall pay such excess to the City; if such proceeds are in excess of the costs which the Design/Builder should have borne, such excess shall be paid by the City to the Design/Builder. If such costs arise during the performance of the Work, such costs shall be charged against the Contract Price.

#### **7.5 Damaged or Destroyed Work**

The Design/Builder shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the City or Separate Contractors caused by the Design/Builder's correction or removal of Construction Work which is not in accordance with the requirements of the Contract Documents. If such costs arise during the performance of the Work, such costs shall be charged against the Contract Price.

#### **7.6 Acceptance of Nonconforming Work**

If the City prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the City may do so instead of requiring its removal and correction, in which case the Contract Price will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not Final Payment has been made.

#### **7.7 No Effect on Limitations**

Nothing contained in this Article shall be construed to establish a period of limitation with respect to other obligations which the Design/Builder might have under the Contract Documents. Establishment of the time period of one year as described in Article 7.2 relates only to the specific obligation of the Design/Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design/Builder's liability with respect to the

Design/Builder's obligations other than specifically to correct the Work.

### **ARTICLE 8 – SUBCONSULTANS AND SUBCONTRACTORS**

#### **8.1 Coordination of Subconsultant and Subcontractors.**

The Design/Builder shall be solely responsible for scheduling and coordinating the work of Subconsultants, Subcontractors and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with Design/Builder. The Design/Builder shall require all Subconsultants, Subcontractors and such other persons and organizations performing or furnishing any of the Work to communicate with the City through the Design/Builder. All work performed by a Subconsultant or Subcontractor will be pursuant to an appropriate Subconsulting Agreement of Subcontract between Design/Builder and the Subconsultant or Subcontractor which specifically binds the Subconsultant or Subcontractor to the applicable terms and conditions of the Contract Documents.

#### **8.2 Incorporation of Contract Documents.**

The Design/Builder shall require each Subconsultant and Subcontractor, to the extent of the Work to be performed by such Subconsultant and Subcontractor, to assume towards the Design/Builder all the obligations and responsibilities which the Design/Builder by the Contract Documents assumes towards the City and shall incorporate the terms of this Agreement and the Contract Documents to the extent applicable to the Work to be performed by the Subconsultants and Subcontractors.

#### **8.3 Assignment of Subconsulting Agreements and Subcontracts.**

Each Subconsulting Agreement and Subcontract shall expressly preserve and protect the rights of the City under the Contract Documents with respect to the Work to be performed by the Subconsultant or Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall include a provision granting to the City the right to succeed to the interest of, or otherwise accept an assignment of, such Subconsulting Agreement or Subcontract, but only in

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the event of a termination of this Agreement by the City due to the existence of a Design/Builder Default. Any such assignment shall be subject to the prior rights of the Supplier, if any, obligated under bond relating to the Agreement.

**8.4 Substitutions of Subconsultants and/or Subcontractors.** Those portions of the Work that the Design/Builder does not intend to perform with the Design Builder's own personnel shall be performed under Subconsulting Agreements or Subcontracts. The listing of Subconsultants and Subcontractors provided for in the Design/Builder's Statement of Qualifications and Proposal, in compliance with the "Subletting and Subcontracting Fair Practices Act" (The Act) (Public Contract Code Section 4100-4113, inclusive), shall not be modified in any way without the prior written approval of the City.

**8.5 Work Restrictions and Competitive Bidding Requirement for Unknown Construction Activities at Time of Award**

**8.5.1** For construction activities required by the Project that are unknown at time of award and the Design/Builder does not self-perform, City requires that the additional Work be let according to competitive bidding requirements set forth in the Charter and Municipal Code of the City of San Diego and therefore the Design/Builder is hereby authorized to act as the Agent of City for the limited purpose of conducting the competitive bidding in accordance with said Charter and Municipal Code. In all other capacities it is understood that Design/Builder shall be an independent contractor and that any other reference to "Agent" of the City do not include or refer to the Design/Builder.

**8.5.1.1** In those instances where the Design/Builder determines it must engage the services of a Subcontractor for construction activities unknown at time of award, the Design/Builder shall be responsible for competitively bidding all Construction Work to others and for entering into agreements, in Design/Builder's own name, with the lowest responsible and reliable bidder. Design/Builder shall be responsible for all delays resulting from bid protests or challenges resulting therefrom. However, if the Design/Builder has fully complied in good faith with the competitive bidding requirements, it shall be held

harmless from any expense or delays resulting from bid protests or challenges resulting therefrom.

**8.5.1.2** Design/Builder shall be responsible for ensuring that these agreements fully comply with all applicable local, state and federal laws, some but not all of which are listed below.

**8.5.1.3** Specifically, Section 94 of the City's Charter requires that all Construction Work shall be let to the lowest responsible and reliable bidder not less than ten (10) Days after advertising for one (1) Day in the official newspaper of City for sealed Proposals for the Work contemplated.

**8.5.1.4** All other aspects of City's competitive bid law shall apply, including but not limited to the following:

**8.5.1.4.1**

Design/Builder shall have the right to reject all bids and re-advertise;

**8.5.1.4.2**

Design/Builder shall award to the lowest responsible and reliable bidder.

**8.5.2** Unless otherwise provided in the Contracts Documents the Design/Builder shall require all successful bidders to comply with the Subletting and Subcontracting Fair Practices Act during performance of the Work and Design/Builder shall conduct all applicable hearings required by Public Contract Code Section 4100 et seq.

**8.5.3** Design/Builder shall hear and decide bid protests and shall develop and maintain bid protest procedures for that purpose.

**8.5.4** Design/Builder shall require appropriate Bid, Payment and Performance Bonds for the Work on bond forms furnished by the Design/Builder. Such Bonds shall name the City, as an obligee.

**ARTICLE 9 – INSURANCE AND BONDS;  
INDEMNIFICATION**

**9.1 Performance, Payment and Other Bonds.** The Design/Builder shall furnish Performance and Payment Bonds on forms provided by the OWNER,



each in the amount set forth in the Supplementary General Conditions as security for the faithful performance and payment of all the Design/Builder's obligations under the Contract Documents.

**9.1.1 Bond Requirement.** The Design/Builder shall furnish Performance and Payment Bonds; each in the amount set forth Article 9.1 as security for the faithful performance and payment of all the Design/Builder's obligations under the Contract Documents. The Design/Builder shall provide bonds as follows:

**9.1.1.1 Performance Bond -** A Performance Bond to guarantee faithful performance of the Contract and associated work, within the time prescribed, and in a manner satisfactory to the OWNER.

**9.1.1.2 Payment Bond -** A Payment Bond to satisfy claims of material suppliers and of mechanics and laborers employed on the work. The Payment Bond shall be maintained by the Design/Builder in full force and effect until the work is accepted by the OWNER and until all claims for materials and labor are paid, and shall otherwise comply with all applicable laws and the contract documents.

The Design/Builder shall also furnish such other Bonds as are required by the Article 9.

**9.1.2 Licensed Surety.** All Bonds shall be in the form prescribed by the Contract Documents and by such sureties which are admitted insurers in the State of California and are subject to regulation by the Department of Insurance, and which also satisfy the requirements stated in Section 995.660 of the Code of Civil Procedure, except as provided otherwise by Laws or Regulations. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act. Surety companies must be duly licensed or authorized in the State of California to issue Bonds for the limits so required. Such Surety companies shall also meet such additional requirements and qualifications as may be provided in the Article 9.

**9.1.3 Bankrupt or Insolvent Surety.** If the Surety on any Bond furnished by the Design/Builder is declared bankrupt or becomes insolvent or its right to do business is terminated in the State of California, the Design/Builder shall within

seven (7) Days thereafter substitute another Bond and Surety, which must be acceptable to the City per Articles 9.1.1 and 9.1.2 above.

## **9.2 Insurance**

**9.2.1 Policies and Procedures -** Design/Builder shall, at its sole cost and expense, procure insurance against claims for loss including injuries to persons or damage to property, which may arise out of or in connection, with the performance of the Work hereunder by the Design/Builder, Design/Builder's agents, representatives, officers, employees or subcontractors. Design/Builder shall maintain this insurance for the duration of this Contract and at all times thereafter when the Design/Builder is correcting, removing, or replacing Work in accordance with this Contract. Design/Builder's liabilities, including but not limited to Design/Builder's indemnity obligations, under this Contract shall not be deemed limited in any way to the insurance coverage required herein. Payment for insurance shall be included in the various items of Work as bid, and except as specifically agreed to by the City in writing, Design/Builder shall not be entitled to any additional payment. Design/Builder shall not begin any work under this Contract until it has provided and the City has approved all required insurance. Except as provided for under California law, all policies of insurance required hereunder must provide that the City is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Maintenance of specified insurance coverage is a material element of this Contract and Design/Builder's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Contract may be treated as a material breach of contract by City.

## **9.2.2 Types of Insurance -**

**9.2.2.1 Commercial General Liability Insurance -** Design/Builder shall provide at its expense a policy or policies of Commercial General Liability (CGL) Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form and acceptable to the City providing coverage at least as broad and which shall cover liability arising from premises and operations, XCU (explosions, underground, and collapse) independent contractors,

products/completed operations, personal injury and advertising injury, property damage, and liability assumed under an insured's contract (including the tort liability of another assumed in a business contract). There shall be no endorsement or modification of the CGL Insurance limiting the scope of coverage for either "insured vs. insured" claims or contractual liability. Design/Builder shall maintain the same or equivalent CGL Insurance as described herein for at least 10 years following substantial completion of the work. All costs of defense shall be outside the policy limits. Policy coverage shall in liability limits of not less than the following:

#### Limits of Liability

General Annual Aggregate Limit  
(Other than Products/Completed  
Operations) \$2,000,000

Products/Completed  
Operations Aggregate Limit \$2,000,000  
Personal Injury Limit \$1,000,000  
Each Occurrence \$1,000,000

#### 9.2.2.2 Commercial

**Automobile Liability Insurance** - Design/Builder shall provide at its expense a policy or policies of Commercial Automobile Liability Insurance written on an ISO form CA 00 01 12 90 or an equivalent form and acceptable to the City providing coverage at least as broad in the amount of \$1,000,000 combined single limit per accident, covering bodily injury and property damage for owned, non-owned and hired automobiles ("Any Auto"). All costs of defense shall be outside the limits of the policy.

#### 9.2.2.3 Workers' Compensation

**Insurance And Employers Liability Insurance** - Design/Builder shall provide at its expense Workers' Compensation Insurance and Employers Liability Insurance to protect the Design/Builder against all claims under applicable state workers compensation laws. The City, its elected officials, and employees will not be responsible for any claims in law or equity occasioned by the failure of the Design/Builder to comply with the requirements of this section. Limits for this insurance shall be not less than the following:

Workers' Compensation Statutory

#### Employers Liability

Bodily Injury by Accident \$1,000,000 each accident  
Bodily Injury by Disease \$1,000,000 each employee  
Bodily Injury by Disease \$1,000,000 policy limit

Before execution of the Contract by the OWNER, the Design/Builder shall file the following signed certification:

"I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for worker's compensation or to undertake self-insurance, in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of the Contract."

9.2.2.4 Architects and Engineers Professional Insurance (Errors and Omissions Insurance) - For all of the Design/Builder's employees who are subject to this Agreement, the Consultant shall keep in full force and effect, Professional Liability coverage for professional liability with a limit of \$1,000,000 million per claim and \$2,000,000 million annual aggregate. The Consultant shall ensure both that: (1) the policy retroactive date is on or before the date of commencement of the Project; and (2) this policy will be maintained in force for a period of five (5) years after substantial completion of the project or termination of this Agreement whichever occurs last. The Consultant agrees that for the time period defined above, there will be no changes or endorsement to the policy that increase the City's exposure to loss.

9.2.3 Rating Requirements - Except for the State Compensation Insurance Fund, all insurance required by this Contract as described herein shall be carried only by responsible insurance companies with a rating of, or equivalent to, at least "A-, VI" by A.M. Best Company, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by the City.

9.2.3.1 Non-Admitted Carriers - The City will accept insurance provided by non-admitted,

"surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (LESLI list).

All policies of insurance carried by non-admitted carriers shall be subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

**9.2.4 Evidence of Insurance** - The Design/Builder shall furnish to the City documents including but not limited to certificates of insurance and endorsements evidencing the insurance required herein, and shall furnish renewal documentation prior to expiration of this insurance. Each required document shall be signed by the insurer or a person authorized by the insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all insurance policies required herein.

## **9.2.5 Policy Endorsements**

### **9.2.5.1 Commercial General Liability Insurance**

#### **9.2.5.1.1 Additional Insured**

- The policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents, and representatives. The coverage for Projects for which the Engineer's Estimate is \$1,000,000 or more shall include liability arising out of: (a) Ongoing operations performed by you or on your behalf, (b) Your products, (c) Your work, including but not limited to your completed operations performed by you or on your behalf, or (d) premises owned, leased, controlled, or used by you; the coverage for Projects for which the Engineer's Estimate is less than \$1,000,000 shall include liability arising out of: (a) Ongoing operations performed by you or on your behalf, (b) Your products, or (c) premises owned, leased, controlled, or used by you; *Except* that in connection with, collateral to, or affecting any construction contract to which the provisions of subdivision (b) of Section 2782 of the California Civil Code apply, these endorsements shall not provide any duty of indemnity coverage for the active negligence of the City of San Diego and its respective elected officials, officers, employees, agents, and representatives in any case where an agreement to indemnify the City of San Diego and its respective elected officials, officers, employees, agents, and representatives would be invalid under subdivision (b) of Section 2782 of the California Civil Code. In any

case where a claim or loss encompasses the negligence of the Insured and the active negligence of the City of San Diego and its respective elected officials, officers, employees, agents, and representatives that is not covered because of California Insurance Code Section 11580.04, the insurer's obligation to the City of San Diego and its respective elected officials, officers, employees, agents, and representatives shall be limited to obligations permitted by California Insurance Code Section 11580.04.

**9.2.5.1.2 Primary And Non-Contributory Coverage** - The policy or policies must be endorsed to provide that the insurance afforded by the CGL policy or policies is primary to any insurance or self-insurance of the City of San Diego and its elected officials, officers, employees, agents and representatives with respect to operations, including the completed operations if appropriate, of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents and representatives shall be in excess of Design/Builder's insurance and shall not contribute to it.

**9.2.5.1.3 Project General Aggregate Limit** - The policy or policies must be endorsed to provide a Designated Construction Project General Aggregate Limit that will apply only to the Work performed under this Contract. Claims payments not arising from the Work shall not reduce the Designated Construction Project General Aggregate Limit. The Designated Construction Project General Aggregate Limit shall be in addition to the aggregate limit provided for the products-completed operations hazard.

### **9.2.5.2 Commercial Automobile Liability Insurance**

**9.2.5.2.1 Additional Insured** - Unless the policy or policies of Commercial Auto Liability Insurance are written on an ISO form CA 00 01 12 90 or a later version of this form or equivalent form providing coverage at least as broad, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents, and representatives, with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Design/Builder; *Except* that in connection with,

collateral to, or affecting any construction contract to which the provisions of subdivision (b) of Section 2782 of the California Civil Code apply, this endorsement shall not provide any duty of indemnity coverage for the active negligence of the City of San Diego and its respective elected officials, officers, employees, agents, and representatives in any case where an agreement to indemnify the City of San Diego and its respective elected officials, officers, employees, agents, and representatives would be invalid under subdivision (b) of Section 2782 of the California Civil Code. In any case where a claim or loss encompasses the negligence of the Insured and the active negligence of the City of San Diego and its respective elected officials, officers, employees, agents, and representatives that is not covered because of California Insurance Code Section 11580.04, the insurer's obligation to the City of San Diego and its respective elected officials, officers, employees, agents, and representatives shall be limited to obligations permitted by California Insurance Code Section 11580.04.

#### **9.2.5.3 Workers' Compensation and Employer's Liability Insurance Endorsement**

**9.2.5.3.1 Waiver Of Subrogation** - The policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against the City, and its respective elected officials, officers, employees, agents, and representatives for losses paid under the terms of the policy or policies and which arise from work performed by the Named Insured for the City.

**9.2.6 Deductibles/Self-Insured Retentions** - Design/Builder shall be responsible for the payment of all deductibles and self-insured retentions which must be disclosed to the City at the time the evidence of insurance is provided.

**9.2.7 Reservation Of Rights** - The City reserves the right, from time to time, to review the Design/Builder's insurance coverage, limits, deductibles and self-insured retentions to determine if they are acceptable to the City. The City will reimburse the Design/Builder for the cost of the additional premium for any coverage requested by the City in excess of that required by this Contract without overhead, profit, or any other markup.

**9.2.8 Notice Of Changes To Insurance** - Design/Builder shall notify the City 30 days prior to any material change to the policies of insurance provided under this Contract.

**9.2.9 Excess Insurance** - All policies providing excess coverage shall follow the form of the primary policy or policies including but not limited to all endorsements.

**9.2.10 Architects and Engineers Professional Liability Insurance (Errors and Omission Insurance)**. This insurance shall protect the Design/Builder against claims arising from the negligent performance of design services or willful misconduct by Design/Builder, the Design Consultant, and/or the Architect-Engineer.

**9.2.11 Restriction on Start of Site Work**. The Design/Builder shall not perform any Work unless the Design/Builder has in full force and effect all required insurance. The Design/Builder shall not allow any Subconsultant and Subcontractor, Supplier, or other organization to perform Work unless the worker's compensation requirements have been met.

#### **9.3. Indemnification**

**9.3.1 Non-Design Services Indemnification and Defense** - Other than in the performance of Design Services which shall be solely as addressed in 9.3.2 below, to the fullest extent permitted by law, Design-Builder shall defend (with legal counsel reasonably acceptable to the City), indemnify and hold harmless the City and its officers, agents, departments, officials, and employees [Indemnified Parties] from and against all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Design-Builder or its Subcontractors), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any services (including, without limitation, construction services) performed under this Agreement by the Design-Builder, any Subcontractor, anyone directly or indirectly employed by them, or anyone that they control. The Design-Builder's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities

arising from the active negligence, sole negligence or willful misconduct of the Indemnified Parties.

### **9.3.2 Design Services Indemnification and Defense.**

**9.3.2.1 Design Services Indemnification.** To the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782.8), with respect to the performance of Design Services, Design-Builder shall indemnify and hold harmless the City, its officers, or employees, from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of Design-Builder or Design Builder's officers or employees and others hired or controlled by the Design-Builder.

**9.3.2.2 Design Services Defense.** Parties will work in good faith to procure applicable insurance coverage for the cost of any defense arising from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of Design-Builder or Design-Builder's officers or employees.

**9.3 Enforcement Costs.** The Design-Builder agrees to pay any and all costs the City incurs enforcing the indemnity and defense provisions set forth in Section 9.3.

**9.3.4 Insurance -** The provisions of Section 9.3 are not limited by the requirements of Section 9.2 related to insurance.

**9.3.5 Survival of Obligation.** All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive, completion and acceptance of the Work and termination or completion of the Agreement.

## **ARTICLE 10 – PROTECTION OF PERSONS AND PROPERTY**

### **10.1 Safety Precautions and Programs**

**10.1.1 Site Safety.** The Design/Builder shall be solely responsible for initiating, maintaining and providing supervision of Safety precautions and programs in connection with the Work, and shall also comply with all Applicable Law and regulations and any and all insurance carrier-mandated Safety requirements and programs.

**10.1.2 Notices.** In connection with the performance of the Work, the Design/Builder shall give notices and comply with Applicable Laws bearing on the Safety of persons and property and their protection from damage, injury or loss.

### **10.2 Safety of Persons and Property**

**10.2.1 Reasonable Precautions.** The Design/Builder shall take reasonable precautions for the Safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

**10.2.1.1** Employees on the Work and other persons who may be affected thereby;

**10.2.1.2** The Work and materials and equipment to be incorporated therein, whether in storage on or off the Site under care, custody or control of the Design/Builder; and

**10.2.1.3** other property at the Site or adjacent thereto, including but not limited to trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of the Construction Work.

**10.2.2 Safeguards.** The Design/Builder shall erect and maintain, as required by existing conditions and performance of the Work, reasonable safeguards for Safety and protection, including posting danger signs and other warnings against hazards, promulgating Safety regulations and notifying owners and users of adjacent sites and utilities, and shall comply fully with the requirements of State and/or Federal OSHA.

**10.2.3 Use of Explosives.** When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Construction Work, the Design/Builder shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

**10.2.4 Remedy of Damage.** The Design/Builder shall promptly remedy damage and loss to property referred to in Articles 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Design/Builder or anyone employed and/or subcontracted by or in control of Design/Builder and

for whose acts Design/Builder is responsible under Articles 10.2.1.2 and 10.2.1.3, except damage or loss arising from the sole negligence or willful misconduct of the City, Separate Contractors or anyone directly or indirectly employed by either of them, and not in any way attributable to the fault or negligence of the Design/Builder. The foregoing obligations of the Design/Builder are in addition to the Design/Builder's obligations under Article 9.3. All costs incurred by the Design/Builder in connection with its obligations under this Article shall be part of the Contract Price.

#### **10.2.5 Designation of Safety**

**Coordinator.** The Design/Builder shall designate or cause to be designated a responsible member of its organization, located at the Site, whose full-time duty shall be the prevention of accidents at the Site. The designated Safety Coordinator shall meet all the qualification criteria set forth in Section 1520 of the Scope of Work.

#### **10.2.6 Loads and Storage.**

The Design/Builder shall not load, lift or permit any part of the Construction Work in such a manner so as to endanger the Safety of any person or property. All materials and equipment shall be secured and safely stored in a manner so as not to endanger any person or property.

### **10.3 Security**

The Design/Builder shall take any and all precautions that may be reasonably necessary to render all portions of the Work, the Site and any adjacent areas affected by the Work secure in all material respects, to decrease the likelihood of accidents, and to avoid vandalism and other contingencies which are liable to delay the Work or give rise to claims or liabilities. The Design/Builder shall furnish and install all necessary facilities to provide safe means of access to all points where Work is being performed. The Design/Builder shall take all precautions and measures as may be reasonably necessary to secure the Site, the Project, and the Work at all hours, including evenings, Holidays and non-work hours. Such precautions may include provision of security guards. All cost incurred by the Design/Builder for security shall be included in the Contract Price.

### **10.4 Damage to Property at the Site**

The Design/Builder shall be responsible for any and all damage or loss to property at the Site, except to the extent caused by the sole negligence of the City or its representatives, employees. The costs and expenses incurred by the Design/Builder under this Article shall be paid at no additional cost to the City to the extent that such costs and expenses are in excess of or are not covered by required insurance as set forth in Article 9, and to the extent of any deductibles.

### **10.5 Damage to Property of Others**

The Design/Builder shall avoid damage, as a result of the Design/Builder's operations, to existing sidewalks, curbs, streets, alleys, pavements, utilities, adjacent property, the work of Separate Contractors and the property of the City. The Design/Builder shall repair any such damage caused by the operations of the Design/Builder, which costs shall be paid at no additional cost to the City to the extent that such costs and expenses are in excess of or are not covered by required insurance as set forth in Article 9, and to the extent of any deductible.

### **10.6 Failure of Design/Builder to Repair Damage**

If the Design/Builder fails to commence the repair of damage to property as set forth in Article 10, and/or fails to diligently pursue such repair, then the City, after ten (10) Days prior written notice to the Design/Builder, provided the Design/Builder has not commenced such repair during such ten (10) Day period, may elect to repair such damages with its own forces or by Separate Contractors and to deduct from payments due or to become due to the Design/Builder amounts paid or incurred by the City in correcting such damage.

### **10.7 Emergencies**

If an emergency arises or appears imminent which may affect the Safety of persons or property, the Design/Builder shall act immediately to prevent and mitigate actual or threatened damage, injury or loss. Additional costs or extensions of time claimed by the Design/Builder on account of an emergency not caused by the fault or neglect of the Design/Builder shall be determined as provided in Article 4 and Article 6 hereof.

## ARTICLE 11 – DISPUTES

**11.1 General**

All Claims, counterclaims, disputes, and other matters in question arising under, or relating to, the Contract Documents or the breach thereof shall be processed in accordance with the provisions of this Article and are subject to audit by the City in accordance with Article 13.10.1.

**11.2 Request for Change**

**11.2.1 Design/Builder's Right to Request a Change.** In accordance with Articles 4 and 6, the Design/Builder may request an extension of the Contract Time or a change in the Contract Price. Such a request shall be in writing, and shall be delivered to the City within the time periods outlined in Articles 4 and 6.

**11.2.2 City's Entitlement Decision.** The City shall make its Entitlement Decision in writing on the Design/Builder's request within twenty (20) Business Days of receipt of the request and all supporting data.

**11.2.3 Design/Builder Dispute and Request for Formal City's Initial Determination.** Should the Design/Builder disagree with the City's Entitlement Decision, the Design/Builder may request a formal Initial Determination from the City. Such a request shall be in writing, and shall be delivered within twenty (20) Business Days after receipt of the City's Entitlement Decision.

**11.2.4 City's Initial Determination.** The City shall make an Initial Determination on the Design/Builder's request in writing, within twenty (20) Business Days of receipt of the request and all supporting data.

**11.2.5 Design/Builder Appeal and Claim.** Should the Design/Builder disagree with the City's Initial Determination, the Design/Builder may file a Claim requesting a Final Determination from the City. Such a request shall be in writing, and shall be delivered within twenty (20) Business Days after receipt of the City's Initial Determination, and after

certifying his claim is current, accurate and complete in accordance with Article 11.3.

**11.2.6 Waiver of Rights.** Failure of the Design/Builder to notify the City and deliver all supporting data in accordance with the time periods outlined above or failure to respond to the City's Initial Determination within the time period outlined in Article 11.2.5, shall be deemed to be a waiver of objection or right to further Claim of this matter.

**11.3 Claims**

**11.3.1 Claim Arising Under the Contract.** A Claim arising under the Contract, unlike a Claim relating to the Contract, is a Claim that can be resolved under a Contract provision that provides for or excludes the relief sought by the claimant. Such Claims shall be resolved under the applicable provisions of the Contract.

**11.3.2 Period of Claim.** For any Claim under this Article to be valid, it shall be based upon written notice delivered by the Design/Builder to the City promptly, but in no event later than twenty (20) Business Days, after receipt of the City's Initial Determination as outlined in Article 11.2. The responsibility to substantiate claims shall rest with the Party making the Claim.

**11.3.3 Claim Certification Requirements.** For all Design/Builder Claims seeking an increase in Contract Price or Contract Time, the Design/Builder shall submit with the Claim an affidavit certifying that:

**11.3.3.1 Claim Made In Good Faith.** The Claim is made in good faith, and the amount claimed accurately reflects the adjustments in Contract Price or Contract Time for which the Design/Builder believes the City is liable, and covers all direct, supplemental, indirect, consequential, serial and cumulative costs and delays to which the Design/Builder is entitled as a result of the occurrence of the claimed event;

**11.3.3.2 Cost and Pricing Data.** Supporting Cost and Pricing Data are current, accurate, complete and represent the best of the Design/Builder's knowledge and belief; and,

**11.3.3.3 Design/Builder's Agent.** If the Design/Builder is an individual, the

affidavit shall be executed by that individual; if the Design/Builder is not an individual, the affidavit shall be executed by a senior company official in charge at the Design/Builder's plant or location involved, or a responsible officer or general partner of the Design/Builder.

**11.3.4 Progress Schedule Analysis.** All Claims for time shall be supported by an analysis of the CPM Progress Schedule detailing the impact of the claimed work on specific impacted schedule activities.

## **11.4 Claims Resolution Process**

**11.4.1 Design/Builder Claim.** The Design/Builder must submit his claim certification and request for a settlement meeting and a City's Final Determination to the City within twenty (20) Business Days of receipt of the City's Initial Determination.

**11.4.2 Settlement Meeting.** Within fifteen (15) Business Days of receipt of the Design/Builder's Claim, the City will schedule a "Settlement Meeting" between the Design/Builder's representative and a representative of the City from the E&CP Department. This meeting will be an opportunity for the Design/Builder to explain his Claim to senior management of E&CP Department. If a settlement agreement cannot be reached, the City will proceed to make a written determination.

**11.4.3 City's Determination.** The City shall make a written determination within twenty (20) Business Days after the settlement meeting. The City's Determination shall be final and binding on the Design/Builder unless the Design/Builder notifies the City in writing of his objection within fifteen (15) Business Days after receipt of the City's Determination, and files a "Request for Mediation" with the American Arbitration Association. Failure to give notice of objection within said fifteen (15) Business Days period shall be deemed to be a waiver of the Design/Builder's right to pursue the Claim.

**11.4.4 Project Neutral Mediation.** Project Neutral Mediation, hereinafter referred to as Mediation, shall occur if settlement is not reached at the "Settlement Meeting" between the Design/Builder and a representative of the City from the [INSERT DEPARTMENT NAME]. Mediation will be conducted as follows:

### **11.4.4.1 Party Participation.**

Mediation shall be mandatory for both Parties if either one wishes to pursue an unresolved dispute subsequent to the results of a "Settlement Meeting" between the Design/Builder CEO and a representative of the City from the E&CP Department. Mediation shall be a prerequisite to both Parties requesting a Dispute Resolution Board hearing or either Party proceeding to litigation.

### **11.4.4.2 Filing Requirement.**

After the failure of the "Settlement Meeting" to resolve a dispute and after the City issues a written determination pursuant to Article 11.4.3, either Party may file a "Request for Mediation". Such requests shall be filed within fifteen (15) Business Days after the City issues the written determination unless both Parties mutually agree to an extension of time beyond that period.

### **11.4.4.3 Alternative Disputes**

**Resolution Process.** Mediation shall be conducted in accordance with the City's Alternative Dispute Resolution process, utilizing a Mediator skilled in Mediation and having expertise in construction. The selection process shall be administered by the American Arbitration Association or any other such neutral organization selected by the City, hereinafter called the "Administrator".

To initiate Mediation, the initiating Party shall serve a "Request for Mediation" to the opposing Party. At the same time, the initiating Party shall file with the Administrator the following: three (3) copies of the "Request for Mediation", along with the appropriate filing fees; a copy of the list of Mediators marked in preference order, after striking any Mediators to which they have any factual objection; and, a copy of the calendar form designating the initiating Party's availability for the Mediation Hearing.

Within two (2) Business Days from receipt of the initiating Party's Request for Mediation, the opposing Party shall file the following: a copy of the list of the Mediators listed in preference order, after striking any Mediators to which they have any factual objection; and, a copy of the calendar form designating their availability for the Mediation Hearing.

The Administrator will appoint the highest, mutually preferred Mediator from the individual Parties' lists



who is available to serve within the designated time frame. Mediation shall occur as soon as the Parties' and the Mediator's schedule reasonable permit.

**11.4.4.4** Any resultant agreements from Mediation shall be documented in writing by both Parties and may be used as the basis for a Change Order or other directive as appropriate. All Mediation results and documentation, by themselves, shall be "non-binding" and inadmissible for any purpose in any legal proceeding, unless such admission is otherwise agreed upon in writing by both Parties. Mediators shall not be subject to any subpoena or liability, and their actions shall not be subject to Discovery.

**11.4.4.5** Mediation Hearings shall be informal and Discovery shall not be permitted. Discussions or admissions during Mediation discussions shall be considered as part of privileged settlement discussions, without prejudice to any Party's legal position.

**11.4.4.6** Spokespersons shall be limited to City staff and its consultants, and Design/Builder / Subconsultant, Subcontractor / Supplier personnel, except that, at its option, the Design/Builder may have an attorney present, in which event it shall advise the City no less than three (3) Business Days before the mediation so that the City may also have its attorney present. Outside experts, including attorneys, may address their specialty if approved by both Parties.

**11.4.4.7** Each Party may present its views and supporting information, including documents, drawings, or other pertinent material. All such evidence and displays shall be considered confidential and shall be retained by the presenting Party.

**11.4.4.8** If no settlement is reached as a result of the Mediation Hearing, both Parties may mutually agree to attempt settlement through a Dispute Resolution Board. If either Party disagrees, the Design/Builder must then file a Government Code Claim with the City Risk Management Department who will forward said Claim to the City Attorney for consideration.

**11.4.4.9** All costs of Project Neutral Mediation, including those of the institution furnishing the Mediator, shall be shared equally by both Parties. Fees shall be jointly negotiated by both Parties directly with the Administrator. Unless otherwise mutually agreed upon, Mediation costs for Claims up to \$60,000 shall not exceed \$1,500 and costs for Claims over \$60,000 shall not exceed \$3,000.

**11.4.4.10** The Mediator may be retained for on-going problems during the life of the contract if mutually agreed upon by both Parties.

**11.4.5 Dispute Resolution Board.** A Dispute Resolution Board (DRB) may be convened, if both Parties agree, after a Mediation Hearing has failed to achieve a settlement. The availability of the DRB process is not a constraint for either Party to directly proceed to litigation. DRB Hearings will be conducted as follows:

**11.4.5.1** If requested by both Parties after the failure of a Mediation Hearing, a DRB Hearing will occur within twenty (20) Business Days for Claims involving \$60,000 or less and within thirty (30) Business Days for Claims involving more than \$60,000.

**11.4.5.2** The DRB process shall be conducted in accordance with the City's Alternative Dispute Resolution process, utilizing board members who are individuals who have expertise in construction. The selection process shall be administered by the American Arbitration Association, or any other such neutral organization selected by the City, hereinafter called "Administrator". Claims made for \$60,000 or less shall be heard by one DRB member and Claims for more than \$60,000 shall be heard by three DRB members.

**11.4.5.3** To initiate the DRB procedures, the Parties shall jointly execute and file a "Submission to Dispute Resolution Board Procedures" request with the Administrator. Upon receipt by the Administrator of the submission form, the Administrator shall furnish to the Parties a list of individuals skilled in dispute resolution and having expertise in construction from which to select the Dispute Resolution Board. Within five (5) Business Days from the date the list is sent to the Parties, the Parties shall return the list to the Administrator, striking any individuals to which the Parties have any factual objections and numbering the remaining in

preference order. The Administrator shall appoint the highest mutually preferred individuals to the DRB that are available to serve in the time frame designated in Article 11.4.5.1.

**11.4.5.4** Any resultant agreements from a DRB Hearing shall be documented in writing by both Parties and may be used as the basis for a Change Order or other directive as appropriate. All DRB results and documentation, by themselves, shall be "non-binding" and inadmissible for any purpose in any legal proceeding, unless such admission is otherwise agreed upon in writing by both Parties. DRB Members shall not be subject to any subpoena or liability and their actions shall not be subject to Discovery.

**11.4.5.5** Discussions or admissions during DRB discussions shall be considered as part of privileged settlement discussions, without prejudice to any Party's legal position.

**11.4.5.6** DRB Hearings shall be informal and Discovery shall not be permitted. Each Party shall have a maximum of two (2) hours for presentation, unless otherwise agreed upon. Spokespersons shall be limited to City staff and its consultants, and Design/Builder / Subconsultant, Subcontractors / Supplier personnel, except that, at its option, the Design/Builder may have an Attorney present, in which event it shall advise the City no less than three (3) Business Days before the mediation so that the City may then also have its Attorney present. Outside experts, including attorneys may address their specialty if approved by both Parties.

**11.4.5.7** Each Party will be given full opportunity to present its views and supporting information, including documents, drawings, or other pertinent material. All such evidence and displays shall be considered confidential and shall be retained by the presenting Party.

**11.4.5.8** Within five (5) Business Days after the hearing, the DRB will make its recommendation in writing for resolution of the dispute to all Parties. The DRB will strive for consensus and unanimity in its decision making. If such is unattainable, however, separate written recommendations may be made as majority and minority reports.

**11.4.5.9** If either Party rejects the decision of the DRB, the Design/Builder may then file a Government Code Claim with the City Risk Management Department who will forward it to the City Attorney for consideration.

**11.4.5.10** All costs of DRB Hearings, including those of the institution furnishing DRB Members, shall be shared equally by both Parties. Fees shall be jointly negotiated by both Parties directly with the DRB Administrator. Unless otherwise mutually agreed upon, costs for Claims up to \$60,000 shall not exceed \$1,500 and costs for Claims over \$60,000 shall not exceed \$3,000.

**11.4.5.11** DRB Members may be retained for on-going problems during the life of the contract if mutually agreed upon by both Parties.

**11.4.6 Design/Builder Obligation to Proceed.** Pending final resolution of any Claim, including litigation, the Design/Builder shall proceed diligently with performance of the Work, and comply with any direction of the City.

## **11.5 Jurisdiction and Venue**

**11.5.1 Jurisdiction.** The Design/Builder, and any Subconsultant, Subcontractor, Supplier and any other person or organization performing any part of Work, agree that each of them will waive jurisdiction and shall submit to the jurisdiction of the courts of the State of California regardless of residence or domicile, with respect to any actions or suits at law or in equity arising under or related to the bidding, award or performance of the Work.

**11.5.2 Venue.** The Design/Builder, Subconsultant, Subcontractor, Supplier or any other person or organization shall commence any action only in the County of San Diego, State of California, against the City, or any of its consultants, and/or any of their respective directors, officers, employees, representatives or agents, with regard to any matter whatsoever arising out of or relating to the validity, construction, interpretation or reinforcement of the Contract.

## **ARTICLE 12 – SUSPENSION OF WORK AND TERMINATION**

**12.1 Suspension of Work by the City.** The City may, at any time and without cause, suspend the Work or any portion thereof for a period of not more than ninety (90) Days by notice in writing to the Design/Builder. The Design/Builder shall resume the Work on receipt from the City of a Notice of Resumption of Work. The Design/Builder may submit a request for a change in the Contract Price or of the Contract Time, or both, directly attributable to the suspension as provided in Articles 4 and 6.

**12.2 Native American, Archaeological and Paleontological Discoveries**

**12.2.1** If a Mitigation, Monitoring, and Reporting Program [MMRP] for Historical, and/or Paleontological resources has been prepared for the Project, then the MMRP will control in lieu of this section, unless the MMRP is silent to these issues.

**12.2.2** If discovery is made of items of Native American, Archaeological and/or Paleontological interest, the Contractor shall *immediately notify the City and cease any soil disturbing activity in the area of discovery and any nearby area.* Upon notification by the Contractor, the City will immediately notify the San Diego County Coroner [Medical Examiner] at (858) 694-2895 if bones of unknown origin are discovered, in accordance with the California Health and Safety Code Sections 7050.5 and 7051. The City will not authorize any further excavation or disturbance of the site or any nearby area until the Medical Examiner has concluded an investigation of the circumstances, manner and cause of any death, and the recommendations concerning the treatment and disposition of the remains have been made to the City.

**12.2.3** The Design/Builder may be entitled to an extension of Contract Time and Contract Price in accordance with the provisions of the Contract Documents.

**12.2.4** Discoveries which may be encountered include, but are not limited to, fossil resources, historic or prehistoric human bones or remains, animal bones or remains, stone implements or other artifacts and/or remnants of dwelling sites, and any items created or altered by humans more than 45 years ago, excluding pipes, laterals and appurtenances.

**12.2.5** There are SEVERE CIVIL AND CRIMINAL CONSEQUENCES for failure to treat Native American, Archaeological and/or Paleontological discoveries in accordance with local, State and Federal laws. Contractor shall notify all its subcontractors and suppliers of the requirements of this section. Failure to notify the City upon discovery of items of Native American, Archaeological and/or Paleontological interest is considered a Default by Contractor and may result in termination of Contract. Furthermore, Contractor shall indemnify and hold the City of San Diego, its officers and employees, harmless from any claims asserted or liability established, including penalties from local, state or federal agencies, arising from the failure of the Contractor, its subcontractors or suppliers, to notify the City of such discoveries in accordance with this section.

**12.3 Termination of Agreement by City for Cause**

**12.3.1** In the event of Default by the Design/Builder, the City shall give fourteen (14) Days written notice to the Design/Builder of City's intent to terminate the Agreement and provide the Design/Builder opportunity to remedy the conditions constituting the Default.

**12.3.2 Design/Builder Default.** It shall be considered a Default by the Design/Builder when Design/Builder:

**12.3.2.1** declares bankruptcy, becomes insolvent, assigns its assets for the benefit of its creditors, or is unable to pay debts as they become due;

**12.3.2.2** fails to provide materials or workmanship meeting the requirements of the Contract Documents, and fails to correct the Defective Work as required by Article 7;

**12.3.2.3** disregards or violates provisions of the Contract Documents or City's instructions;

**12.3.2.4** fails to prosecute the Work according to the approved Schedule;

**12.3.2.5** fails to provide a qualified superintendent, competent workmen, or materials or equipment meeting the requirements of the Contract Documents;

**12.3.2.6** fails to meet Agreement Milestones, including Interim Contract Milestones;

**12.3.2.7** disregards Laws or Regulations of any public body having jurisdiction; or

**12.3.2.8** commits continuous or repeated serious violations of approved or legislated Safety plan requirements.

**12.3.3 Design/Builder Fails to Correct.** If the Design/Builder fails to remedy the conditions constituting Default within the time allowed, the City may then issue the Notice of Termination.

**12.3.4 City May Take Possession.** In the event the Agreement is terminated in accordance with Article 12, the City may take possession of the Work and may complete the Work by whatever method or means the City may select. The cost of completing the Work shall be deducted from the balance which would have been due the Design/Builder had the Agreement not been terminated and the Work completed in accordance with the Contract Documents. If such cost exceeds the balance which would have been due, the Design/Builder shall pay the excess amount to the City. If such cost is less than the balance which would have been due, the Design/Builder shall not have Claim to the difference.

**12.4 Rights of City Preserved.** Where the Design/Builder's services have been so terminated by the City, the termination will not affect any rights or remedies of the City against the Design/Builder then existing or which may thereafter accrue. Any Retention or payment of moneys due the Design/Builder by the City will not release the Design/Builder from liability.

**12.5 Termination of the City for Just Cause.** The City may terminate the Agreement for just cause at its own discretion or when conditions encountered during the Work make it impossible or impractical to proceed, or when the City is prevented from proceeding with the Agreement by act of God, by law, or by official action of a public authority.

## **12.5.1 Termination for Convenience of the City**

**12.5.1.1 Termination of Design/Builder's Performance of Work.** The City may terminate, subject to the express terms and conditions set forth below, the Design/Builder's performance of Work under this Agreement, in whole or, from time to time, in part, if the City Council does not appropriate sufficient monies to fund the Agreement. The City shall terminate on behalf of the City by delivering to the Design/Builder a Notice of Termination, in writing, specifying the extent of the termination and the effective date.

**12.5.1.2 Notice of Termination.** After receipt of the Notice of Termination, and except as otherwise directed by the City, the Design/Builder shall immediately proceed as follows:

**12.5.1.2.1** stop Work immediately or as specified in the Notice;

**12.5.1.2.2** immediately place no further Subconsulting Agreement and/or Subcontracts for materials, services, or facilities, except as necessary to complete any City authorized portion of the Work or requirements of the Contract Documents;

**12.5.1.2.3** immediately terminate all Subconsulting Agreements and/or Subcontracts to the extent they relate to the Work terminated;

**12.5.1.2.4** with approval by the City, settle all outstanding obligations arising from the termination of Subconsulting Agreements and/or Subcontracts; the approval of which will be final for purposes of this clause;

**12.5.1.2.5** as directed by the City, transfer the title and deliver to the City, completed or partially completed drawings, plans, calculations, specifications and any other documents and records that, if the Agreement has been completed, would be required to be furnished to the City;

**12.5.1.2.6** complete performance of the Work not terminated;

**12.5.1.2.7** take any

action that may be necessary, or that the City may direct, for the protection and preservation of the property related to this Agreement that is in the possession of the Design/Builder and in which the City has or may acquire an interest.

**12.5.1.3 Removal of City**

**Property.** The Design/Builder may request the City to remove the City's property or enter into an agreement for its storage. Within sixty (60) Days, the City will accept title of property and remove it or enter into a storage agreement.

**12.5.1.4 Termination**

**Settlement.** After termination, the Design/Builder shall submit a final termination settlement Proposal to the City in the form and with the certification prescribed by the City. The Design/Builder shall submit the Proposal promptly, but not later than six (6) months from the effective date of termination, unless extended, in writing, by the City upon written request of the Design/Builder within this six (6) month period. However, if the City determines that the facts justify it, a termination settlement Proposal may be received and acted on after six (6) months or any extension. If the Design/Builder fails to submit the Proposal within the time allowed, the City may, in good faith, determine, on the basis of information available, the fair and reasonable amount, if any, due the Design/Builder as a result of the termination and pay the amount determined. If the Design/Builder does not agree that the amount determined by the City is fair and reasonable, and if the Design/Builder gives notice of such disagreement to the City in accordance with this Article within thirty (30) Days of receipt of payment, then the amount due shall be determined as set forth in Article 11, if the City and the Design/Builder agree thereto, or as fixed in a court of law.

**12.5.1.5 Payment for**

**Design/Builder Due to Termination.** Subject to the above paragraph, the Design/Builder and the City may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on Work done. However, the agreed amount, exclusive of costs shown in Article 12.5.1.6.3 below, may not exceed the total dollar amount authorized by the City as reduced

by (1) the amount of payments previously made; and (2) the contract price of Work not terminated. The Agreement shall be amended, and the Design/Builder paid the agreed amount. The paragraph below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

**12.5.1.6 Failure to Agree on**

**Payment.** If the Design/Builder and City fail to agree on the whole amount to be paid because of the termination of Work, the City shall pay the Design/Builder the fair and reasonable amounts determined in good faith by the City as follows, but without duplication of any amounts agreed above:

**12.5.1.6.1** the contract

price for completed services accepted by the City not previously paid for, adjusted for any saving of freight and other charges.

**12.5.1.6.2** the total of:**12.5.1.6.2.1** the costs

incurred in the performance of the Work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to services paid or to be paid under Article 12.5.1.6;

**12.5.1.6.2.2** the fair and

reasonable cost of settling and paying termination settlement Proposals under terminated Subconsulting Agreements and/or Subcontracts that are properly chargeable to the terminated portion of the Agreement if not included in Article above; and

**12.5.1.6.2.3** a sum, as

profit on the above Article determined by the City to be fair and reasonable under the circumstances; however, if it appears that the Design/Builder would have sustained a loss on the entire Agreement had it been completed, the City shall allow no profit under this Article and shall reduce the settlement to reflect the indicated rate of loss.

**12.5.1.6.3** The

reasonable costs of settlement of the Work terminated, including:

**12.5.1.6.3.1** accounting,

legal, clerical, and other expenses reasonably necessary

for the preparation of termination of settlement  
Proposals and supporting data;

**12.5.1.6.3.2** the  
termination and settlement of Subconsulting  
Agreements and/or Subcontracts (excluding the  
amounts of such settlements); and

**12.5.1.6.3.3** storage,  
transportation, and other costs incurred, reasonable  
necessary for the preservation, protection, or  
disposition of property in which the City has or may  
acquire an interest.

**12.5.1.7 Disputes Resolution of  
Payment.** If the Design/Builder does not agree that  
the amount determined by the City under Article  
12.5.1.6 is fair and reasonable and if the  
Design/Builder gives notice of such disagreement to  
the City in accordance with Article 12.5.1.4 of this  
Agreement within thirty (30) Days of receipt of  
payment, then the amount due shall be as later  
determined as set forth in Article 11, or as set forth in a  
court of law.

**12.5.1.8 Payment for Property  
Destroyed, Lost Stolen or Damaged.** Except to the  
extent that the City expressly assumed the risk of loss,  
the City shall exclude from the amounts payable to the  
Design/Builder under Article 12.5.1.6, the fair value,  
as determined by the City, of property that is  
destroyed, lost, stolen, or damaged so as to become  
undeliverable to the City.

**12.5.1.9 Determination of  
Amount Due Design/Builder.** In arriving at the  
amount due the Design/Builder under this clause, there  
shall be deducted:

**12.5.1.9.1** all  
unliquidated advance or other payments to the  
Design/Builder under the terminated portion of this  
Agreement;

**12.5.1.9.2** any Claim  
which the City has against the Design/Builder under  
this Agreement; and

**12.5.1.9.3** the agreed  
price for, or the proceeds of sale of, materials,  
supplies, or other things acquired by the

Design/Builder or sold under the provisions of this  
Article and not recovered by or credited to the City.

**12.5.2 Partial Termination.** If the  
termination is partial, the Design/Builder may file a  
Proposal with the City for an equitable adjustment of  
the price(s) of the continued portion of the Agreement.  
Any Proposal by the Design/Builder for an equitable  
adjustment under this clause shall be requested within  
ninety (90) Days from the effective date of termination  
unless extended, in writing, by the City. The City shall  
make any equitable adjustment agreed upon.

**12.5.2.1 Partial Termination  
Payment.** The City may, under the terms and  
conditions it prescribes, make partial payment and  
payments against costs incurred by the Design/Builder  
for the terminated portion of the Agreement if the City  
believes the total of these payments will not exceed the  
amount to which the Design/Builder will be entitled.  
If the total payments exceed the amount finally  
determined to be due, the Design/Builder shall repay  
the excess to the City upon demand, together with  
interest. Interest shall be at a rate of six percent (6%)  
per annum compounded daily and shall be computed  
for the period from the date the excess payment is  
received by the Design/Builder to the date the excess is  
repaid. Interest shall not be charged on any excess  
payment due to a reduction in the Design/Builder's  
termination settlement Proposal because of Retention  
or disposition, or a later date determined by the City  
because of the circumstances.

**12.5.3 Records and Documents Relating  
to Termination.** Unless otherwise provided in the  
Agreement or by statute, the Design/Builder shall  
maintain all records and documents relating to the  
terminated portion of this Agreement for three (3)  
years after final settlement. This includes all books  
and other evidence bearing on the Design/Builder's  
costs and expenses under this Agreement. The  
Design/Builder shall make these records and  
documents available to the City, at the  
Design/Builder's office, at all reasonable times,  
without any direct charge. If approved by the City,  
photographs, microphotographs, or other authentic  
reproductions may be maintained instead of original  
records and documents.

**12.6 Termination of the Agreement by  
Design/Builder.** The Design/Builder may terminate

the Agreement upon ten (10) Days written notice to the City, whenever:

**12.6.1 Work Suspended for More than Ninety (90) Days.** The Work has been suspended under the provisions of Article 12, for more than ninety (90) consecutive Days through no fault or negligence of the Design/Builder, and notice to resume Work or to terminate the Agreement has not been received from the City within this time period; or,

**12.6.2 City Failure to Pay.** The City should fail to pay the Design/Builder any undisputed monies due him in accordance with the terms of the Contract Documents and within ninety (90) Days after presentation to the City by the Design/Builder of such a request, unless, within said ten (10) Day period the City shall have remedied the condition upon which the payment delay was based.

**12.6.3 Design/Builder Claims.** In the event of such termination, the Design/Builder shall have no Claims against the City except for those Claims specifically enumerated and determined in accordance with the requirements of Article 6.

## **ARTICLE 13 – MISCELLANEOUS PROVISIONS**

### **13.1 Governing Law**

This Agreement shall be governed by the laws of the State of California.

**13.2 Assignment of Agreement.** The Design/Builder shall not assign, sublet, sell, transfer, or otherwise dispose of the Agreement or any portion thereof, or its right, title, or interest therein, or obligations thereunder, without the written consent of the City except as imposed by law. If the Design/Builder violates this provision, the Agreement may be terminated at the option of the City. In such event, the City shall be relieved of all liability and obligations to the Design/Builder and to its assignee or transferee, growing out of such termination.

### **13.3 Written Notice**

Written notice shall be deemed to have been duly served on the date of delivery if delivered in person, on the Day after deposit if delivery by

overnight courier, or two (2) Days after deposit if delivery by placing in the United States mail. All notices shall be addressed to the appropriate Authorized Representative as set forth in Exhibit K.

### **13.4 Commencement of Statutory Limitation Period and Statute of Repose Period**

The Design/Builder agrees that for purposes of any statute of limitations that may govern the City's right to assert a Claim or bring suit against the Design/Builder for anything arising out of this Agreement, such statute shall be tolled and shall not begin to run, at the earliest, until Final Completion of the Project.

### **13.5 Equal Opportunity Contracting Program (EOCP) Design/build Requirements**

The Design/Builder, Subconsultants and Subcontractors shall comply with the provisions of Exhibit F hereto with respect to utilization of minority and women business enterprises.

### **13.6 Nondiscrimination in Contracting**

**13.6.1 General.** All City agreements, contracts, Subcontracts, etc, are now subject to City of San Diego Ordinance No. 0-2000-143 adopted on April 10, 2000. All City Contractors and Subcontractors should be aware of the provisions of Municipal Code Sections 22.3401-22.3417. The policy applies equally to the Design/Builder, Subconsultants and all Subcontractors. The Design/Builder shall insure that the following clauses are incorporated in all Subcontracts issued in support of the Project.

**13.6.1** Design/Builder shall not discriminate on the basis on race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of Subcontractors, vendors or Suppliers. Design/Builder shall provide equal opportunity for Subcontractors to participate in subcontracting opportunities. Design/Builder understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions.

**13.6.2** Upon the City's request, Design/Builder agrees to provide to the City, within sixty (60) calendar Days, a truthful and complete list of

the names of all Subcontractors, vendors, and Suppliers that Design/Builder has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Design/Builder for each Subcontract or supply contract. Design/Builder further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Nondiscrimination in Contracting Ordinance (Municipal Code Sections 22.3401 - 22.3417). Design/Builder understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in remedies being ordered against the Design/Builder up to and including contract termination, debarment, and other sanctions for violation of the provisions of the Nondiscrimination in Contracting Ordinance. Design/Builder further understands and agrees that the procedures, remedies and sanctions provided for in the Nondiscrimination Ordinance apply only to violations of said Nondiscrimination Ordinance.

### **13.7 Change Orders**

No Change Orders shall be valid unless in writing and signed by an Authorized Representative of the City and the Design/Builder or their respective permitted successors and assigns.

### **13.8 Interpretation**

Any and all headings of this Agreement are for convenience of reference only and do not modify, define or limit the provisions thereof. Words of any gender shall be deemed and construed to include correlative words of the other gender. Words importing the singular number shall include the plural number and vice versa, unless the context shall otherwise be deemed to include all supplements, Change Orders to any such exhibits or documents entered into in accordance with the terms hereof and thereof. All references to any person or entity shall be deemed to include any person or entity succeeding to the rights, duties and obligations of such person or entity in accordance with the terms of this Agreement. Where reference is made in this Agreement to another Contract Document, the reference refers to that provision as amended or supplemented by the other provisions of the Contract Documents.

### **13.9 Severability**

If any provision of this Agreement is held to be inoperative or unenforceable as applied in any particular case because it conflicts with any other provision hereof or any constitution, statute, ordinance, rule of law or public policy, or for any other reason, such holding shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case, or of rendering any other provision herein contained inoperative or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or Articles contained in this Agreement shall not affect the remaining portions of this Agreement or any part hereof, and they shall otherwise remain in full force and effect.

### **13.10 Accounting Records**

The Design/Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement; the accounting and control systems shall be reasonably satisfactory to the City. The City and the City's accountants shall be afforded access to the Design/Builder's records, books, correspondence, instructions, drawings, receipts, Subconsulting Agreements, Subcontracts, vouchers, memoranda and other data relating to this Agreement, and the Design/Builder shall preserve these for a period of three (3) years after Final Payment, or for such longer period as may be required by law.

#### **13.10.1 Right to Audit**

**13.10.1.1 All Accounting Records.** The Design/Builder shall make available to the City for auditing, all relevant accounting records and documents, and other financial data, and upon request, shall submit true copies of requested records to the City.

**13.10.1.2 Requests for Change, Requests for Proposal, and Claims.** If the Design/Builder submits a Request for Change, a Request for Proposal, or a Claim to the City, the City shall have the right to audit the Design/Builder's books to the extent they are relevant, including but not limited to cost reports, bids, estimates, contract cost records, and schedules.

**13.10.1.3 Audit Right Includes.** This right shall include the right to examine original



books, records, source documents, including but not limited to job cost reports and the records, and other evidence and accounting procedures and practices, sufficient to discover and verify all direct and indirect costs of whatever nature claimed to have been incurred or anticipated to be incurred and for which the Claim has been submitted.

**13.10.1.4 Right to Inspect Design Materials.** The right to audit shall include the right to inspect the Design/Builder's Design Materials, or such parts thereof, as may be or have been engaged in the performance of the Work.

**13.10.1.5 Right to Audit Subconsultants and Subcontractors.** The Design/Builder further agrees that the right to audit encompasses all Subconsulting Agreements and Subcontracts and is binding upon Subconsultants and Subcontractors. The rights to examine and inspect herein provided for shall be exercisable through such representatives as the City deems desirable during the Design/Builder's normal business hours at the office of the Design/Builder.

### **13.11 Drug-Free Workplace**

**13.11.1 General.** All City projects are now subject to City of San Diego Resolution No. R-277952 adopted on May 20, 1991. All City Contractors should be aware of the provisions of Council Policy 100-17 which was established by the above numbered resolution. The policy applies equally to the Design/Builder, Subconsultants and all Subcontractors. The elements of the policy are outlined below.

#### **13.11.2 Definitions**

**13.11.2.1 Drug-free Workplace.** A site for the performance of work done in connection with a contract let by City of San Diego for the design, construction, maintenance, or repair of any facility or public work by an entity at which employees of the entity are prohibited from engaging in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in accordance with the requirements of this section.

**13.11.2.2 Employee.** The employee of a Design/Builder, Subconsultant, or Subcontractor directly engaged in the performance of

work pursuant to a contract as described herein Section 13.11.3, "City Design/Builder Requirements."

#### **13.11.2.3 Controlled Substance.**

A controlled substance is set forth in schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. Sec. 812).

**13.11.3 City Design/Builder Requirements.** Every person or organization awarded a contract or grant by the City of San Diego for the provision of services shall certify to the City that it will provide a drug-free workplace by doing all of the following:

**13.11.3.1** Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's organization's workplace and specifying the actions that will be taken against employees for violations of the prohibition.

**13.11.3.2** Establishing a drug-free awareness program to inform employees about all of the following:

**13.11.3.2.1** the dangers of drug abuse in the workplace.

**13.11.3.2.2** the person's or organization's policy of maintaining a drug-free workplace.

**13.11.3.2.3** any available drug counseling, rehabilitation, and employee assistance programs.

**13.11.3.2.4** the penalties that may be imposed upon employees for drug abuse violations.

**13.11.3.3** Posting the statement required by subdivision (1) in a prominent place at the Design/Builder, Subconsultants, and Subcontractors main offices. For projects large enough to necessitate a construction trailer at the job site, the required signage would also be posted at the job site.

**13.11.4** Design/Builder shall include in each Subconsulting Agreement and Subcontract language

which indicates the Subconsultant's and Subcontractor's agreement to abide by the provisions of subdivisions 13.11.3.1) through 13.11.3.3) above. Design/Builder, Subconsultants, and Subcontractors shall be individually responsible for their own drug-free workplace programs.

**13.11.5** Design/Builder will submit the signed form included as Exhibit H certifying compliance with San Diego City Council Policy No. 100-17 regarding Drug-Free Workplace.

Note: The requirements of a drug-free awareness program can be satisfied by periodic tailgate sessions covering the various aspects of drug-abuse education. Although an in-house employee assistance program is not required, Design/Builder should be able to provide a listing of drug rehabilitation and counseling programs available in the community at large.

**13.11.6** Questions about the City's Drug-free Workplace Policy should be referred to the Director, [INSERT DEPARTMENT NAME].

**13.12 Cumulative Remedies.** The duties and obligations imposed by this Agreement and the rights and remedies available hereunder to the Parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon the Design Builder by this Agreement and all of the rights and remedies available to City thereunder; are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies imposed or available by Laws or Regulations, by special warranty or guarantee or by other provisions of the Contract Documents.

**13.13 Title to Materials Found On-Site.** The City reserves the right to retain title to all soils, stone, sand, gravel, and other materials developed and obtained from excavations and other operations connected with the Work. Unless otherwise specified in the Contract Documents, neither the Design Builder nor any Subconsultant or Subcontractor shall have any right, title, or interest in or to any such materials. The Design/Builder will be permitted to use in the Work, without charge, any such materials which meet the requirements of the Contract Documents.

**13.14 All Legal Provisions Included.** All provisions of law required to be inserted in the Agreement or Contract Documents shall be and are inserted herein. If through mistake, neglect, oversight or otherwise, any such provision is not herein inserted or inserted in improper form, upon the application of either Party, the Agreement or Contract Documents shall be changed by the City, at no increase in Contract Price or extension in Contract Time, so as to strictly comply with the law and without prejudice to the rights of either Party hereunder.

### **13.15 No Conflict with Laws or Regulations**

**13.15.1** The duties, obligations, criteria or procedure imposed by this Agreement and the rights and remedies made available are in addition to, and are not to be construed in any way as a limitation of any rights and remedies imposed or available by Laws or Regulations, except that in the event that a specific part or detailed requirement of a provision, criterion or procedure in this Agreement and a specific part or detailed requirement of a provision, criterion or procedure imposed or available by Laws or Regulations are in conflict, the specific part or detailed requirement of such provision, criterion or procedure imposed or available by Laws or Regulations shall govern. All other specific parts or detailed requirements in the provisions, criteria or procedures of the Applicable Laws or Regulations and this Agreement not in conflict shall remain in full force and effect and be read with the controlling specific part or detailed requirement.

**13.15.2** The provisions of Articles 13.12 and 13.15 will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply.

**13.16 Joint Ventures or Partnerships.** In the event the Design/Builder is a Joint Venture or a Partnership, all grants, covenants, provisions and claims, rights, powers, privileges and liabilities of the Agreement shall be construed and held to be several as well as joint. Any notice, order, directive, request or any communication required to be or that may be given by the City to the Design/Builder, shall be well and sufficiently given to all entities being the Design/Builder if given to any one or more of such entities. Any notice, request or other communication

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given by any one of such entities to the City under this Agreement shall be deemed to have been given by and shall bind all entities being the Design/Builder. The Joint Venture or Partnership shall designate an on-site representative and an alternate in writing. The on-site representative and the alternate shall have the full authority to bind all Joint Venture or Partnership partners. All Joint Ventures or Partnerships must provide for Joint and Several Liability. Any other form of Joint Venture or Partnership agreement is not acceptable to the City. The Joint Venture or Partnership shall provide a copy of the Joint Venture or Partnership agreement and a copy of the Joint Venture or Partnership license shall be provided to the City prior to award of the Agreement.

### **13.17 Whole Agreement**

This Agreement, the Exhibits hereto, the Contract Documents, Addenda and Change Orders which may be delivered or issued after the effective date of this Agreement, and are not attached hereto, shall constitute the entire agreement between the Parties, and no inducements, considerations, promises or other references shall be implied in this Agreement that are not expressly addressed herein.

### **13.18 Employment of City Staff by**

**Design/Builder.** This Contract may be unilaterally and immediately terminated by the City if the Design/Builder or any of its Subcontractors and/or Subconsultants knowingly employs an individual who, within the twelve (12) months immediately preceding such employment did, in the individual's capacity as a City officer or employee, participate in, negotiate with or otherwise have an influence on the recommendation made to the City Council in connection with the selection of the Design/Builder and its Subcontractors and or Subconsultants.

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## EXECUTION PAGE

IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego, acting by and through its Mayor or designee, pursuant to Resolution No. \_\_\_\_\_ authorizing such execution, and by the Consultant.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_.

THE CITY OF SAN DIEGO

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: Director, Purchasing & Contracting Department

I HEREBY CERTIFY I can legally bind **BERGELECTRIC CORPORATION** and that I have read all of this

Agreement, this 15th day of October, 2008.

By:  \_\_\_\_\_

Authorized Representative

Printed Name: Ken Bertalan

Title: Sr. Vice President, Construction

I HEREBY APPROVE the form and legality of the foregoing Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_.

MICHAEL J. AGUIRRE, City Attorney

By: \_\_\_\_\_

Deputy City Attorney

Printed Name: \_\_\_\_\_



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**EXHIBIT A**

**LIST OF CONTRACT DOCUMENTS**

**General**

The Design Builder shall provide the City with all services, labor, materials and equipment required to complete the design and construction of the Pump Station 1 and Pump Station 2 Electrical Upgrade and New Electrical Building at Pump Station 2 Project. In accordance with the Contract Documents

The Contract shall include the following documents:

- The executed Agreement and Exhibits
- The Request For Proposal
- The Proposal Prepared by the Design Builder
- Addendums to the RFP
- Attachments to the RFP
- Appendix 1 thru 7 to the Scope of Work (Attachment A to the RFP)

**Standards and Guidelines**

The plans and specifications prepared by the Design/Builder shall be developed in accordance to and consistent with the basic technical requirements contained in the following documents, which shall be included in the Contract Documents by reference:

- Clean Water Program (CWP) Guidelines
- 2006 Edition of the City of San Diego standard Drawings
- 2006 Edition of Standard Specifications for Public Works Construction (SSPWC or Green Book) including all current City approved Regional Supplements, City Supplements, and City Special Provisions.
- Latest Edition of the National Electric Code.
- Latest Edition of the Uniform Building Code.

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**EXHIBIT B****SITE AND PROJECT DESCRIPTION**

The Sewer Pump Station 1 (PS1) and Pump Station (PS2) are the largest Pump Stations in the Metropolitan Sewerage System. Pump Station 1 located on East Harbor Drive collects all of South San Diego's wastewater and sends the flow north via the 8 mile South Metro Interceptor to Pump Station 2 located on North Harbor Drive.

Pump Station 1 auxiliary equipment electrical distribution system, is the original installed hardware that was built in 1963. The work at PS1 involves the replacement of the 480 volts Unit Substation with a new double ended Unit Substation with automatic throwover capabilities to automatically switch from one feed to another should one of the feed fail. In addition the two existing Motor Control Centers will be replaced with new MCC and Distribution Boards to provide redundancy and eliminate any single point failures.

The Electrical Upgrade at Pump Station 2 involves a new electrical building to house the new Medium Voltage Switchgears and upgrading the electrical system. Upgrading the electrical system will provide the pump station the capability of running all the six pumps from any two of the three utility services at any time and also the capability to run three pumps from one service in the case no other service is available.

The electrical system upgrade of Pump Station 1 and 2 will add a higher degree of reliability to the San Diego Metropolitan Waste Water System and would go a long way in preventing costly sewer spills. This project will help to ensure reliable operation of the Pump Station during on site distribution outages or component failures.

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## EXHIBIT C

**Project Schedule**

The Project Schedule for the PS1 and PS2 Electrical Upgrade and New Electrical Building at Pump Station 2 will be as follows:

Notice To Proceed	November 2008
Submit 50/90 Percent Design Submittal	January 2009
Submit 100 Percent Design Submittal	April 2009
Construction NTP	June 2009
Notice Of Completion	October 2010

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## EXHIBIT D

## SCHEDULE OF FEE PAYMENTS

Total compensation paid to Bergelectric Corporation by the City for all work performed under this Agreement and its Exhibits, including Allowances shall not exceed Eight Million, One Hundred and Ninety Seven Thousand Dollars (\$8,197,000) for the two (2) years duration of this Agreement. The duration starts from the issuance of Notice To Proceed. This not-to exceed amount includes any Federal, State or Local sales taxes.

Schedule of prices for the DESIGN/BUILD of **"PS1 and PS2 Electrical Upgrade Project and New Building at PS2 Project"** in accordance with the the Contract Documents.

LUMP SUM ITEM					
Item No.	Description	Quantity	Unit	Unit Price	Amount
1	Engineering and Design Services	Lump Sum	N/A	N/A	\$1,550,000
2	General Construction/Building	Lump Sum	N/A	N/A	\$2,290,000
3	Electrical Construction other than Building	Lump Sum	N/A	N/A	\$3,612,000
ALLOWANCE ITEMS					
Note: Payment of the allowance items will be based on actual expenditure in accordance with the Contract Documents.					
Item No.	Description	Quantity	Unit	Unit Price	Amount
4	Allowance for partnering	L.S.	N/A	N/A	\$20,000
5	Allowance for <u>Unknown Utilities</u>	L.S.	N/A	N/A	\$25,000
6	Allowance for Field Orders	L.S.	N/A	N/A	\$400,000
7	Allowance for San Diego Gas & Electric Services	L.S.	N/A	N/A	\$300,000
<b>TOTAL FOR PROPOSAL (ITEMS 1 THROUGH 7 INCLUSIVE)</b>			<b>\$8,197,000.00</b>		

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**EXHIBIT E  
OWNER GOVERNMENTAL APPROVALS**

The permits are hereby made a part of the Agreement, and all requirements shall be fully met by the Design/Builder. The Design/Builder shall observe and comply with these approvals and their conditions at no additional cost to the City. Any fines, penalties, additional mitigation, or litigation costs associated with the Design/Builder's and/or Subcontractor's negligence to obtain the necessary permits and to comply with any of the permit conditions, federal, state, and local laws, ordinances, codes, orders, and regulations, will be passed on the Design/Builder.

The Design/Builder shall be responsible for compliance with all conditions set forth in the environmental documents.

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**EXHIBIT F**  
**EQUAL OPPORTUNITY CONTRACTING PROGRAM (EOCP)**  
**DESIGN/BUILD REQUIREMENTS**

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## EQUAL OPPORTUNITY CONTRACTING PROGRAM (EOCP) DESIGN/BUILD REQUIREMENTS

*This document sets forth the requirements for the City of San Diego's Equal Opportunity Contracting Program. These requirements are terms of the contract for this project.*

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**I. City's Equal Opportunity Commitment.** The City of San Diego promotes equal employment and subcontracting opportunities. The City is committed to ensuring that taxpayer dollars spent on public contracts are not paid to businesses that practice discrimination in employment or subcontracting. The City encourages all companies seeking to do business with the City to share this commitment.

**II. Nondiscrimination in Contracting Ordinance.** Design-Builders doing business with the City, and their subcontractors, must comply with requirements of the City's Nondiscrimination in Contracting Ordinance, San Diego Municipal Code Sections 22.3501 through 22.3517.

**A. Request for Proposal (RFP) Documents to include Disclosure of Discrimination Complaints.**

As part of its bid or proposal, Design-Builder shall provide to the City a list of all instances within the past ten years where a complaint was filed or pending against Design-Builder in a legal or administrative proceeding alleging that Design-Builder discriminated against its employees, subcontractors, vendors, or suppliers, and a description of the status or resolution of that complaint, including any remedial action taken.

**B. Contract Language.** The following language shall be included in contracts for City projects between the Design-Builder and any subcontractors or subconsultants, vendors, and suppliers:

Design-Builder shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors, or suppliers. Design-Builder shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Design-Builder understands and agrees that violation of this clause shall be

considered a material breach of the contract and may result in contract termination, debarment, or other sanctions.

- C. Compliance Investigations. Upon the City's request, Design-Builder agrees to provide to the City, within sixty calendar days, a truthful and complete list of the names of all subcontractors, vendors, subconsultants and suppliers that Design-Builder has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Design-Builder for each subcontract or supply contract. Design-Builder further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Nondiscrimination in Contracting Ordinance, Municipal Code Sections 22.3501 through 22.3517. Design-Builder understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in remedies being ordered against the Design-Builder up to and including contract termination, debarment and other sanctions for violation of the provisions of the Nondiscrimination in Contracting Ordinance. Design-Builder further understands and agrees that the procedures, remedies and sanctions provided for in the Nondiscrimination in Contracting Ordinance apply only to violations of the Ordinance.

**III. Equal Employment Opportunity Outreach Program.** All Design-Builders doing business with the City, and their subcontractors, must comply with the City's Equal Employment Opportunity Outreach Program, San Diego Municipal Code Sections 22.2701 through 22.2707.

- A. Work Force Report. Design-Builder shall submit a Work Force Report (Attachment AA) or an Equal Employment Opportunity (EEO) Plan to the City's Equal Opportunity Contracting Program (EOCP) for approval. If a Work Force Report is submitted, and EOCP determines there are under representations when compared to County Labor Force Availability data, the awarded Design-Builder must submit an Equal Employment Opportunity Plan.
- B. Equal Employment Opportunity Plan. If the awarded Design-Builder submits an Equal Employment Opportunity Plan, it must include the following assurances:
1. The Design-Builder will maintain a working environment free of discrimination, harassment, intimidation and coercion at all sites and in all facilities at which the Design-Builder employees are assigned to work;
  2. A responsible official is designated to monitor all employment related activity to ensure the Design-Builder EEO Policy is being carried out and to submit reports relating to EEO provisions;
  3. The Design-Builder disseminates and reviews its EEO Policy with all employees at least once a year, posts the policy statement and EEO posters on all company bulletin boards and job sites, and documents every dissemination, review and posting with a written record to identify the time, place, employees present, subject matter, and disposition of meetings;
  4. The Design-Builder reviews, at least annually, all supervisors' adherence to and performance under the EEO Policy and maintains written documentation of these reviews;
  5. The Design-Builder discusses its EEO Policy Statement with subcontractors with whom it anticipates doing business, includes the EEO Policy Statement in its subcontracts, and provides such documentation to the City upon request;

6. The Design-Builder documents and maintains a record of all bid proposal solicitations and outreach efforts to and from subcontractors, contractor associations and other business associations;
7. The Design-Builder disseminates its EEO Policy externally through various media, including the media of people of color and women, in advertisements to recruit, maintains files documenting these efforts, and provides copies of these advertisements to the City upon request;
8. The Design-Builder disseminates its EEO Policy to union and community organizations;
9. The Design-Builder provides immediate written notification to the City when any union referral process has impeded the Design-Builders's efforts to maintain its EEO Policy;
10. The Design-Builder maintains a current list of recruitment sources, including those outreaching to people of color and women, and provides written notification of employment opportunities to these recruitment sources with a record of the organizations' responses;
11. The Design-Builder maintains a current file of names, addresses and phone numbers of each walk-in applicant, including people of color and women, and referrals from unions, recruitment sources, or community organizations with a description of the employment action taken;
12. The Design-Builder encourages all present employees, including people of color and women employees, to recruit others;
13. The Design-Builder maintains all employment selection process information with records of all tests and other selection criteria;
14. The Design-Builder develops and maintains documentation for on-the-job training opportunities and/or participates in training programs for all of its employees, including people of color and women, and establishes apprenticeship, trainee, and upgrade programs relevant to the Design-Builder's employment needs;
15. The Design-Builder conducts, at least annually, an inventory and evaluation of all employees for promotional opportunities and encourages all employees to seek and prepare appropriately for such opportunities;
16. The Design-Builder ensures the company's working environment and activities are non-segregated except for providing separate or single-user toilets and necessary changing facilities to assure privacy between the sexes;
17. The Design-Builder establishes and documents policies and procedures to ensure job classifications, work assignments, promotional tests, recruitment and other personnel practices do not have a discriminatory effect; and
18. The Design-Builder is encouraged to participate in voluntary associations which assist in fulfilling one or more of its non-discrimination obligations. The efforts of a contractor association, contractor/community professional association, foundation or other similar group of which the Design-Builder is a member will be considered as being part of fulfilling these obligations, provided the Design-Builder actively participates.

- IV. Subcontracting.** The City encourages all eligible business enterprises to participate in City contracts as prime contractors, subcontractors, joint venture partners with prime or subcontractors, or vendors of materials and supplies. Design-Builders are encouraged to take positive steps to diversify and expand their subcontractor solicitation base and to offer subcontracting opportunities to all eligible business firms including MBE's, WBE's, DBE's, DVBE's, and OBE's. (For definitions, see Paragraph IX.)
- A. Subcontractor Participation Level.** The funding source and estimated dollar value determine the requirements for inclusion of subcontractors on this project:
1. On a City-funded project, if the contract value is estimated to be less than \$250,000, inclusion of subcontractors is strongly encouraged but strictly voluntary.
  2. On a City-funded project, if the contract value is estimated to be more than \$250,000, inclusion of subcontractors will be addressed in the Contract Documents.
  3. On a State- or Federal-funded project, contract requirements defined by the funding agency will apply as defined in the Contract Documents.
- B. Joint Ventures.** Each joint venture partner must be responsible for a clearly defined scope of work. In addition, an agreement must be submitted, signed by all parties, identifying the extent to which each joint venture partner shares in ownership, control, management, risk and profits of the joint venture [Refer to the main body of the RFQ.].
- V. List of Subcontractors.** All Design-Builders must comply with the Subletting and Subcontracting Fair Practices Act, Public Contract Code Sections 4100 through 4113. Design-Builders must list all known subcontractors who will receive more than one-half of one percent (.5%) of the total bid amount for construction. The Act prohibits substitution of subcontractors, except as authorized, and provides penalties. All Design-Builders must submit, on the form provided, a Subcontractor/Subconsultant List (see Contract Documents) with their proposals. For each known proposed subcontractor who will receive more than one-half of one percent (0.5%) of the Design-Builder's total bid amount for construction, the Subcontractor/Subconsultant List must include the subcontractor's name and address, scope of work, percentage of the total proposed contract amount, the dollar amount of the proposed subcontract, subcontractor's certification status, and name of the certifying agency. Further, due to the unique nature of a design-build contract, Design-Builder shall be required to list all other known subcontractors, including, at a minimum, the three largest subcontractors for the project.
- VI. List of Vendors/Suppliers.** Design-Builder must submit, on the form provided, a Vendors/Suppliers List (see Contract Documents) with their bid proposals. For each known proposed vendor or supplier who will receive more than one-half of one percent (0.5%) of the Design-Builder's total bid amount for construction, the Vendors/Suppliers List must include the vendor or supplier's name and address, scope of work, percentage of the total proposed contract amount, the dollar amount of the proposed subcontract, subcontractor's certification status, and name of the certifying agency. Further, due to the unique nature of a design-build contract, Design-Builder shall be required to list all other known vendors and suppliers.
- VII. Substitutions.**
- A. Subcontractor Substitution:**

Requests must be made in writing to the Purchasing & Contracting Department, Attention Contracts Division, 1200 Third Avenue, Suite 200, San Diego, CA 92101. The request must include a thorough explanation of the reason(s) for the substitution, including dollar amounts and a letter from each substituted firm stating that it (the substituted firm) releases all interest in working on the project, written confirmation from the new firm stating that it agrees to work on the project along with the dollar value of the work to be performed. Written approval of the substitution request must be received by the Design-Builder, from the City of San Diego or its authorized officer, prior to any unlisted subcontractor (over one-half of 1% of the total bid amount for construction) performing work on a project. Substitution of subcontractors without authorization shall subject the Design-Builder to those penalties set forth in Public Contract Code Section 4110.

**B. Vendor/Supplier Substitution:**

Requests must be made in writing at least ten (10) calendar days prior to the provision of materials, supplies or services by the proposed vendor/supplier, and shall include proof of written notice to the originally listed vendor/supplier of the proposed substitution. Requests must be made in writing to the Purchasing & Contracting Department, Attention Contracts Division, 1200 Third Avenue, Suite 200, San Diego, CA 92101. Substitution of vendors/suppliers without authorization shall subject the Design-Builder to those penalties set forth in Public Contracts Code Section 4110.

**C. General:** A D/B whose proposal is accepted may not:

1. Substitute a subcontractor, subconsultant, or vendor/supplier in place of the subcontractor, subconsultant, or vendor/supplier listed in the Design-Builder's proposal, except that the City, or its duly authorized officer, may consent to the substitution of a subcontractor, subconsultant, or vendor/supplier in any of the following situations:
  - (a) When the listed subcontractor, subconsultant, or vendor/supplier, after having a reasonable opportunity to do so, fails or refuses to execute a written contract with the Design-Builder, when that written contract, based upon the general terms, conditions, plans and specifications for the project involved or the terms of that subcontractor, subconsultant, or vendor/supplier's written bid is presented to the subcontractor, subconsultant, or vendor/supplier by the Design-Builder.
  - (b) When the listed subcontractor, subconsultant, or vendor/supplier becomes bankrupt or insolvent.
  - (c) When the listed subcontractor, subconsultant, or vendor/supplier fails to perform his or her contract.
  - (d) When the listed subcontractor fails or refuses to meet bond requirements as set forth in Public Contract Code Section 4108.
  - (e) When the Design-Builder demonstrates to the City of San Diego or its duly authorized officer, subject to the provisions set forth in Public Contract Code Section 4107.5, that the name of the subcontractor was listed as the result of an inadvertent clerical error.
  - (f) When the listed subcontractor is not licensed pursuant to the Contractors License Law.

- (g) When the listed subcontractor is ineligible to work on a public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code.
- (h) When the City determines that the listed subcontractor is not a responsible contractor.
- (i) When the City, or its duly authorized officer, determines that the work performed by the listed subcontractor or the materials or supplies provided by the listed vendor/supplier are substantially unsatisfactory and not in substantial accordance with the plans and specifications, or that the subcontractor, subconsultant, or vendor/supplier is substantially delaying or disrupting the progress of the work, or that the services performed by the listed subconsultant are substantially unsatisfactory.

- 2. Permit a subcontract to be voluntarily assigned or transferred or allow it to be performed by anyone other than the original subcontractor, subconsultant or vendor/supplier listed in the Design-Builder's proposal without the consent of the City or its duly authorized officer.
- 3. Other than in the performance of "Change Orders" causing changes or deviations from the original contract, sublet or subcontract any portion of the work, or contract for materials or supplies in excess of one-half of one percent (0.5%) of the Design-Builder's total bid for construction, if the Design-Builder did not designate a subcontractor or vendor/supplier in its proposal or add a subcontractor or vendor/supplier in accordance with the requirements of the Contract Documents.

D. Following receipt of notice from the Design-Builder of the proposed substitution of a subcontractor, subconsultant, or vendor/supplier, the listed subcontractor, subconsultant, or vendor/supplier who has been so notified shall have five (5) working days within which to submit written objections to the substitution to the Purchasing & Contracting Department, Attention Contracts Division, 1200 Third Avenue, Suite 200, San Diego, CA 92101. Failure to file these written objections shall constitute the listed subcontractor, subconsultant, or vendor/supplier's consent to the substitution. If written objections are filed, the City shall give notice in writing of at least five (5) working days to the listed subcontractor, subconsultant, or vendor/supplier of a hearing by the City on the Design-Builder's request for substitution.

#### **VIII. Prompt Payment:**

A Design-Builder and its subcontractors shall pay to any subcontractor, not later than ten (10) days of receipt of each progress payment, unless otherwise agreed to in writing, the respective amounts allowed the Design-Builder or its subcontractor on account of the work performed by the subcontractors, to the extent of each subcontractor's interest therein. In cases of subcontractor performance deficiencies, the Design-Builder shall make written notice of any withholding to the subcontractor with a copy to the City Resident Engineer and the Purchasing & Contracting Department, Attention Contracts Division, 1200 Third Avenue, Suite 200, San Diego, CA 92101. Upon correction of the deficiency, the Design-Builder shall pay the subcontractor the amount previously withheld within fourteen (14) days after payment by the City.

#### **IX. Definitions:**

For purposes of reporting requirements for the Subcontractor/Subconsultant List, the Vendors/Suppliers List, State- and Federal-funded projects, the following definitions apply:



**“Minority Business Enterprise” (MBE)** means a certified business which is at least fifty-one percent (51%) owned by African Americans, American Indians, Asians, Filipinos, and/or Latinos and whose management and daily operation is controlled by one or more members of the identified ethnic groups. In the case of a publicly-owned business, at least fifty-one percent (51%) of the stock must be owned by, and the business operated by, one or more members of the identified ethnic groups.

**“Women Business Enterprise” (WBE)** means a certified business which is at least fifty-one percent (51%) owned by one or more women and whose management and daily operation is controlled by the qualifying party(ies). In the case of a publicly-owned business, at least fifty-one percent (51%) of the stock must be owned by, and the business operated by, one or more women.

**“Disadvantaged Business Enterprise” (DBE)** means a certified business which is at least fifty-one percent (51%) owned and operated by one or more socially and economically disadvantaged individuals and whose management and daily operation is controlled by the qualifying party(ies). In the case of a publicly-owned business, at least fifty-one percent (51%) of the stock must be owned by, and the business operated by, socially and economically disadvantaged individuals.

**“Disabled Veteran Business Enterprise” (DVBE)** means a certified business which is at least fifty-one percent (51%) owned and operated by one or more veterans with a service related disability and whose management and daily business operation is controlled by the qualifying party(ies).

**“Other Business Enterprise” (OBE)** means any business which does not otherwise qualify as Minority, Woman, Disadvantaged or Disabled Veteran Business Enterprise.

#### **X. Certification.**

- A. The City of San Diego is a signatory to a Memorandum of Understanding (MOU) with the California Department of Transportation (CALTRANS), and therefore has adopted a policy regarding certification of MBE/WBE/DBE/DVBE firms. As a result of the MOU, an MBE, WBE or DBE is certified as such by any of the following methods:
  - 1. Current certification by the City of San Diego as MBE, WBE, or DBE;
  - 2. Current certification by the State of California Department of Transportation (CALTRANS) as MBE, WBE or DBE;
  - 3. Current MBE, WBE or DBE certification from any participating agency in the statewide certified pool of firms known as CALCERT.
- B. DVBE certification is received from the State of California’s Department of General Services, Office of Small and Minority Business (916) 322-5060.

#### **XI. Contract Records and Reports.** Design-Builders must maintain the following records and reports required by the City of San Diego’s Equal Opportunity Contracting Program:

- A. Records. The Design-Builder must maintain records of all subcontracts entered into with all firms, all purchases of materials and services from vendors/suppliers, and all joint venture participation. Records must show name, business address, and telephone number (including area code) of each subcontractor, subconsultant, or vendor/supplier, and joint venture partner,

and the total amount actually paid to each firm. These records may be periodically reviewed by the City.

**B. Reports.** The Design-Builder must submit to the City the following reports:

1. **Monthly Employment Report.** The Monthly Employment Report (Attachment BB) must list each individual employee working on the specific project by full name, social security number, gender, ethnic category, craft and employee source (i.e. union hall, apprenticeship program, other). Each Monthly Employment Report is due to the Resident Engineer by the 5th day of the subsequent month with a copy to the Purchasing & Contracting Department, Attn: Compliance Section at 1200 Third Avenue, Suite 200, San Diego, CA 92101.
  - (a) Design-Builder is responsible for collecting and submitting a Monthly Employment Report from all subcontractors, at any level, working at the site.
2. **Monthly Invoicing Report.** The Monthly Invoicing Report (Attachment CC) must report payments made to all subcontractors, subconsultants and vendors/suppliers of the Design-Builder. Each Monthly Invoicing Report is due to the Resident Engineer by the 5th day of the subsequent month with a copy to the Purchasing & Contracting Department, Attn: Compliance Section at 1200 Third Avenue, Suite 200, San Diego, CA 92101.
3. **Contract Activity Report.** The Contract Activity Report (Attachment DD) must report payments made to all subcontractors, subconsultants, and vendors/suppliers of the Design-Builder. Each Contract Activity Report is due by the 30<sup>th</sup> day of the subsequent month at the close of the quarter, or more frequently if required by the City's Project Manager. The Contract Activity Report should be sent to the Resident Engineer by the 5th day of the subsequent month with a copy to the Purchasing & Contracting Department, Attn: Compliance Section at 1200 Third Avenue, Suite 200, San Diego, CA 92101.
4. **Final Summary Report.** The records maintained under Paragraph A described above must be consolidated into a Final Summary Report, certified as correct by an authorized representative of the Design-Builder and submitted to the Resident Engineer thirty (30) days prior to completion with a copy to the Purchasing & Contracting Department, Attn: Compliance Section at 1200 Third Avenue, Suite 200, San Diego, CA 92101. A Notice of Completion and Acceptance will not be filed by the City until after its review of the Final Summary Report.

**XII. List of Attachments.**

- AA. Work Force Report
- BB. Monthly Employment Report
- CC. Monthly Invoicing Report
- DD. Contract Activity Report
- EE. Subcontractor and Subconsultant Past Participation List\*
- FF. Vendor/Supplier Past Participation List\*

000264

\*Documents required to be submitted with Design-Builder's Statement of Qualifications (SOQ)



000265  
City of San Diego  
**EQUAL OPPORTUNITY CONTRACTING PROGRAM**  
1200 Third Avenue · Suite 200 · San Diego, CA 92101  
(619) 236-6000 · FAX: (619)235-5209

## WORK FORCE REPORT

The objective of the *Equal Employment Opportunity Outreach Program*, San Diego Municipal Code Sections 22.3501 through 22.3517, is to ensure that contractors doing business with the City, or receiving funds from the City, do not engage in unlawful discriminatory employment practices prohibited by State and Federal law. Such employment practices include, but are not limited to unlawful discrimination in the following: employment, promotion or upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training, including apprenticeship. Contractors are required to provide a completed *Work Force Report*.

### CONTRACTOR IDENTIFICATION

Type of Contractor: ☐ Construction ☐ Vendor/Supplier ☐ Financial Institution ☐ Lessee/Lessor  
☐ Consultant ☐ Grant Recipient ☐ Insurance Company ☐ Other

Name of Company: \_\_\_\_\_

AKA/DBA: \_\_\_\_\_

Address (Corporate Headquarters, where applicable): \_\_\_\_\_

City \_\_\_\_\_ County \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone Number: ( ) \_\_\_\_\_ FAX Number: ( ) \_\_\_\_\_

Name of Company CEO: \_\_\_\_\_

Address(es), phone and fax number(s) of company facilities located in San Diego County (if different from above): \_\_\_\_\_

Address: \_\_\_\_\_

City \_\_\_\_\_ County \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone Number: ( ) \_\_\_\_\_ FAX Number: ( ) \_\_\_\_\_

Type of Business: \_\_\_\_\_ Type of License: \_\_\_\_\_

The Company has appointed: \_\_\_\_\_

as its Equal Employment Opportunity Officer (EEOO). The EEOO has been given authority to establish, disseminate, and enforce equal employment and affirmative action policies of this company. The EEOO may be contacted at:

Address: \_\_\_\_\_

Telephone Number: ( ) \_\_\_\_\_ FAX Number: ( ) \_\_\_\_\_

For Firm's: ☐ San Diego Work Force and/or ☐ Managing Office Work Force

I, the undersigned representative of \_\_\_\_\_  
(Firm Name)

\_\_\_\_\_, \_\_\_\_\_ hereby certify that information provided  
(County) (State)

herein is true and correct. This document was executed on this day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
(Authorized Signature) (Print Authorized Signature Name)

000266



City of San Diego  
**EQUAL OPPORTUNITY CONTRACTING PROGRAM**  
 1010 Second Avenue \$ Suite 500 \$ San Diego, CA 92101  
 (619) 533-4464 \$ FAX: 533-4474

## WORK FORCE REPORT

The objective of the *Equal Employment Opportunity Outreach Program*, San Diego Municipal Code Sections 22.3501 through 22.3517, is to ensure that contractors doing business with the City, or receiving funds from the City, do not engage in unlawful discriminatory employment practices prohibited by State and Federal law. Such employment practices include, but are not limited to unlawful discrimination in the following: employment, promotion or upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training, including apprenticeship. Contractors are required to provide a completed *Work Force Report*.

### CONTRACTOR IDENTIFICATION

Type of Contractor:      G Construction      G Vendor/Supplier      G Financial Institution      GLessee/Lessor  
    G Consultant      G Grant Recipient      G Insurance Company      GOther

Name of Company: Bergelectric Corporation

AKA/DBA: N/A

Address (Corporate Headquarters, where applicable): 650 Opper Street

City Escondido County San Diego State CA Zip 92029

Telephone Number: (760) 746-1003 FAX Number: (760) 746-6412

Name of Company CEO: J.R. Briscoe

Address(es), phone and fax number(s) of company facilities located in San Diego County (if different from above):

Address: See above

City \_\_\_\_\_ County \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone Number: ( ) \_\_\_\_\_ FAX Number: ( ) \_\_\_\_\_

Type of Business: Electrical Contractor Type of License: Electrical - C10-85046

The Company has appointed: Robert Shaw, Vice President of Human Resources

as its Equal Employment Opportunity Officer (EEOO). The EEOO has been given authority to establish, disseminate, and enforce equal employment and affirmative action policies of this company. The EEOO may be contacted at:

Address: 650 Opper Stree, Escondido, CA 92029

Telephone Number: (760) 746-1003 FAX Number: (760) 746-6412

For Firm's: G San Diego Work Force and/or G Managing Office Work Force

I, the undersigned representative of: Bergelectric Corporation

(Firm Name)

San Diego County, California hereby certify that information provided

(County)

(State)

herein is true and correct. This document was executed on this day of August 6, 2008.

(Authorized Signature)

Tom Anderson - Executive Vice President

(Print Authorized Signature Name)

## Work FORCE REPORT - Page 2

NAME OF FIRM: Bergelectric Corporation

DATE: August 6, 2008

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

- |  |  |
|--|--|
| (1) African-American, Black                          | (5) Filipino                                       |
| (2) Latino, Hispanic, Mexican-American, Puerto Rican | (6) Caucasian                                      |
| (3) Asian, Pacific Islander                          | (7) Other ethnicity; not falling into other groups |
| (4) American Indian, Eskimo                          |  |

OCCUPATIONAL CATEGORY	(1) African-American, Black		(2) Latino, Hispanic, Mexican-American, Puerto Rican		(3) Asian, Pacific Islander		(4) American Indian, Eskimo		(5) Filipino		(6) Caucasian		(7) Other ethnicity; not falling into other groups	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Executive, Administrative, Managerial	1	1	11	1	2	1	0	0	0	0	152	19	2	1
Professional Specialty	140	11	787	15	67	6	26	4	0	0	1,160	21	28	0
Engineers/Architects	0	0	0	0	0	0	0	0	0	0	1	0	0	0
Technicians and Related Support	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Sales	0	0	0	0	0	0	0	0	0	0	3	0	0	0
Administrative Support/Clerical	0	1	0	13	0	1	0	1	0	0	0	19	0	1
Services	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Precision Production, Craft and Repair	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Machines Operators, Assemblers, Inspectors	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Transportation and Material Moving	0	0	5	0	0	0	0	0	0	0	10	0	2	0
Handlers, Equipment Cleaners, Helpers and Non-construction Laborers*	0	0	12	0	1	0	0	0	0	0	2	0	0	0

\*Construction laborers and other field employees are not to be included on this page

TOTALS EACH COLUMN	141	13	815	29	70	8	26	5	0	0	1,328	59	32	2
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GRAND TOTAL ALL EMPLOYEES	2,528													
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INDICATE BY GENDER AND ETHNICITY THE NUMBER OF ABOVE EMPLOYEES WHO ARE DISABLED:

DISABLED	14 White Males		4 Hispanic Males		
----------	----------------	--	------------------	--	--

NON-PROFIT ORGANIZATIONS ONLY:

BOARD OF DIRECTORS														
VOLUNTEERS														
ARTISTS														

## Work FORCE REPORT - Page 3

NAME OF FIRM: Bergelectric Corporation

DATE: August 6, 2008

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

- |  |  |
|--|--|
| (1) African-American, Black                          | (5) Filipino                                       |
| (2) Latino, Hispanic, Mexican-American, Puerto Rican | (6) Caucasian                                      |
| (3) Asian, Pacific Islander                          | (7) Other ethnicity; not falling into other groups |
| (4) American Indian, Eskimo                          |  |

OCCUPATIONAL CATEGORY	(1) African-American		(2) Latino		(3) Asian		(4) American Indian		(5) Filipino		(6) Caucasian		(7) Other Ethnicity	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Carpenter														
Drywall Installer														
Electrician	141	13	815	29	70	8	26	5	0	0	1,328	59	32	2
Elevator Installers														
Finishers, Concrete or Terrazzo														
Glaziers														
Helpers, Construction Trade														
Ironworkers, Structural Metal Workers														
Laborers														
Millwrights														
Masons, Bricklayers														
Tilesetters														
Operators														
Painters														
Pipefitter, Plumbers														
Plasterers														
Roofers														
Security, Protective Services														
Sheet Metal, Duct Installers														
Welders, Cutters														

TOTALS EACH COLUMN														
--------------------	--	--	--	--	--	--	--	--	--	--	--	--	--	--

GRAND TOTAL ALL EMPLOYEES		2,528
---------------------------	--	-------

INDICATE BY GENDER AND ETHNICITY THE NUMBER OF ABOVE EMPLOYEES WHO ARE DISABLED:

DISABLED		14 White Males	4 Hispanic Males
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January 2008 (Rev. Feb 2004)

PS 1 &amp; 2 Electrical Upgrade and New Building Addition at PS 2

000269

## WORK FORCE REPORT - Page 2

NAME OF FIRM: \_\_\_\_\_

DATE: \_\_\_\_\_

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

- |  |  |
|--|--|
| (1) African-American, Black                          | (5) Filipino                                       |
| (2) Latino, Hispanic, Mexican-American, Puerto Rican | (6) Caucasian                                      |
| (3) Asian, Pacific Islander                          | (7) Other ethnicity; not falling into other groups |
| (4) American Indian, Eskimo                          |  |

OCCUPATIONAL CATEGORY	(1) African-American		(2) Latino		(3) Asian		(4) American Indian		(5) Filipino		(6) Caucasian		(7) Other Ethnicities	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Executive, Administrative, Managerial														
Professional Specialty														
Engineers/Architects														
Technicians and Related Support														
Sales														
Administrative Support/Clerical														
Services														
Precision Production, Craft and Repair														
Machine Operators, Assemblers, Inspectors														
Transportation and Material Moving														
Handlers, Equipment Cleaners, Helpers and Non-construction Laborers*														

\*Construction laborers and other field employees are not to be included on this page

TOTALS EACH COLUMN														
--------------------	--	--	--	--	--	--	--	--	--	--	--	--	--	--

GRAND TOTAL ALL EMPLOYEES														
---------------------------	--	--	--	--	--	--	--	--	--	--	--	--	--	--

INDICATE BY GENDER AND ETHNICITY THE NUMBER OF ABOVE EMPLOYEES WHO ARE DISABLED:

DISABLED														
----------	--	--	--	--	--	--	--	--	--	--	--	--	--	--

NON-PROFIT ORGANIZATIONS ONLY:

BOARD OF DIRECTORS														
VOLUNTEERS														
ARTISTS														

EOCP AA (2)

## WORK FORCE REPORT - Page 3

NAME OF FIRM: \_\_\_\_\_ DATE: \_\_\_\_\_



000270

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

- (1) African-American, Black (5) Filipino  
 (2) Latino, Hispanic, Mexican-American, Puerto Rican (6) Caucasian  
 (3) Asian, Pacific Islander (7) Other ethnicity; not falling into other groups  
 (4) American Indian, Eskimo

OCCUPATIONAL CATEGORY	(1) African-American		(2) Latino		(3) Asian		(4) American Indian		(5) Filipino		(6) Caucasian		(7) Other Ethnicities	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Carpenter														
Drywall Installer														
Electrician														
Elevator Installers														
Finishers, Concrete or Terrazzo														
Glaziers														
Helpers, Construction Trade														
Ironworkers, Structural Metal Workers														
Laborers														
Millwrights														
Masons, Bricklayers														
Tilesetters														
Operators														
Painters														
Pipefitter, Plumbers														
Plasterers														
Roofers														
Security, Protective Services														
Sheet Metal, Duct Installers														
Welders, Cutters														

TOTALS EACH COLUMN														
--------------------	--	--	--	--	--	--	--	--	--	--	--	--	--	--

GRAND TOTAL ALL EMPLOYEES														
---------------------------	--	--	--	--	--	--	--	--	--	--	--	--	--	--

INDICATE BY GENDER AND ETHNICITY THE NUMBER OF ABOVE EMPLOYEES WHO ARE DISABLED:

DISABLED														
----------	--	--	--	--	--	--	--	--	--	--	--	--	--	--

EOCP AA (3)

## MONTHLY EMPLOYMENT REPORT

000271

Contractor: \_\_\_\_\_

Employer I.D. Number: \_\_\_\_\_

Project Title: \_\_\_\_\_

Work Order Number: \_\_\_\_\_

Reporting Period: From: \_\_\_\_\_ To: \_\_\_\_\_

Bid Number: \_\_\_\_\_

Employee List		Social Security Number	Male or Female	① Ethnic Symbol	Craft	Employee Source	Number of Hours Worked
Last Name, First Name, Middle Initial							
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							
14							
15							
16							
17							

① Ethnic Symbol	
Black, African American	BL
Mexican American, Hispanic,	MA
Native American, American	NA
Asian, Pacific Islander	AP
Filipino	FL
Caucasian	CA
Other ethnicity (not defined)	OTH

② Employee	
	A
	E
Training	T
Union	U
Other	O

I certify under penalty of perjury that the foregoing information is true and correct:

Authorized Signature \_\_\_\_\_

Printed Name / Title \_\_\_\_\_

Date \_\_\_\_\_

# MONTHLY INVOICING REPORT


Prime Contractor: \_\_\_\_\_  
 Construction Project Title: \_\_\_\_\_  
 Contact Person and Phone: \_\_\_\_\_

Current Reporting Month: \_\_\_\_\_  
 Bid No: \_\_\_\_\_ Work Order No: \_\_\_\_\_  
 Original Contract Amount: \_\_\_\_\_  
 Contract Amount to Date: \_\_\_\_\_

000272

SUBCONTRACTORS / VENDOR/SUPPLIERS (List Complete Name, Phone # & Address) Attach additional pages if necessary.	*DBE or DVBE	Actual Start Date	Date of Last Invoice	Dollar Amount Paid This Month	Amount Invoiced To Date	CUMULATIVE AMOUNTS PAID TO DATE		ORIGINAL AMOUNTS LISTED IN-BID		Change Order Paid This Month
						Dollar Amount	% of Contract	Dollar Amount	% of Contract	
SUBCONTRACTORS:										
VENDORS/SUPPLIERS:										

\*\*

TOTAL DBE SUBCONTRACTORS / SUPPLIERS									
TOTAL DVBE SUBCONTRACTORS / SUPPLIERS									
TOTAL OBE SUBCONTRACTORS / SUPPLIERS									
TOTAL AMOUNT PAID TO PRIME									

\*\*On federal or federally funded projects indicate whether DBE is MBE or WBE correct: \_\_\_\_\_

I certify under penalty of perjury that the foregoing is true and

Authorized Signature

Printed Name / Title

Date

000273

**Include Additional Services Not-to-Exceed Amount**

EOCP DD

**DESIGN BUILD****000274****SUBCONTRACTOR AND SUBCONSULTANT PAST PARTICIPATION LIST  
INFORMATION REGARDING SUBCONTRACTOR AND SUBCONSULTANT PAST PARTICIPATION**

D/B Shall complete this form for each project listed in response to RFQ Attachment F, Section 3.

Subcontractor and Subconsultant Past Participation List shall include name, address and telephone number (including area code) for each subcontractor or subconsultant who participated in the referenced project. Additionally, the listing shall include the type of project, percentage of subcontractor or subconsultant firm participation, and identification of subcontractor/subconsultant firm's ownership as a certified Minority Business Enterprise (MBE), Women Business Enterprise (WBE), Disadvantaged Business Enterprise (DBE), Disabled Veteran Business Enterprise (DVBE), or Other Business Enterprise (OBE).

**NAME OF PROJECT:** \_\_\_\_\_**TYPE OF PROJECT:** \_\_\_\_\_**DOLLAR VALUE OF PROJECT:** \_\_\_\_\_

<b>SUBCONTRACTOR OR SUBCONSULTANT NAME, ADDRESS AND TELEPHONE</b>	<b>TYPE OF WORK PERFORMED</b>	<b>PERCENT OF SUB. PARTICIPATION</b>	<b>① MBE, WBE, DBE, DVBE or OBE</b>	<b>② WHERE CERTIFIED</b>

① *For information only.* D/B shall identify each Subcontractor or Subconsultant as one of the following:

Certified Minority Business Enterprise MBE

Certified Woman Business Enterprise WBE

Certified Disadvantaged Business Enterprise DBE

Certified Disabled Veteran Business Enterprise DVBE

Other Business Enterprise OBE

② *For information only.* D/B shall indicate if Subcontractor or Subconsultant is certified by:

City of San Diego

State of California Department of Transportation

CITY

CALTRANS

EOCP EE (1)

000275

**VENDOR/SUPPLIER PAST PARTICIPATION LIST**

D/B shall complete this form for each project listed in response to RFQ, Attachment F, Section 3

Vendor/Supplier Past Participation List shall include name, address and telephone number (including area code) for each participant in the referenced project. Additionally, the listing shall include the type of project, percentage of vendor/supplier participation, and identification of vendor/supplier firm's ownership as a certified Minority Business Enterprise (MBE), Women Business Enterprise (WBE), Disadvantaged Business Enterprise (DBE), Disabled Veteran Business Enterprise (DVBE), or Other Business Enterprise (OBE).

NAME OF PROJECT: \_\_\_\_\_

TYPE OF PROJECT: \_\_\_\_\_

DOLLAR VALUE OF PROJECT: \_\_\_\_\_

COMPLETE Name, Address and Telephone Number of Vendor/Supplier	Type of Materials or Supplies	Percentage Value Dollar of Materials or Supplies	① MBE WBE DBE DVBE OBE	② Where Certified

① For information only. D/B shall identify Vendor/Supplier as:

Certified Minority Business Enterprise  
 Certified Woman Business Enterprise  
 Certified Disadvantaged Business Enterprise  
 Certified Disabled Veteran Business Enterprise  
 Other Business Enterprise

MBE  
 WBE  
 DBE  
 DVBE  
 OBE

② For information only. D/B shall indicate if Vendor/Supplier is certified by:

City of San Diego  
 State of California Department of Transportation

CITY  
 CALTRANS

EOCP FF

000276

**EXHIBIT G  
WORK FORCE REPORT**

000277

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(619) 533-4464 \$ FAX: 533-4474

The objective of the *Equal Employment Opportunity Outreach Program*, San Diego Municipal Code Sections 22.3501 through 22.3517, is to ensure that contractors doing business with the City, or receiving funds from the City, do not engage in unlawful discriminatory employment practices prohibited by State and Federal law. Such employment practices include, but are not limited to unlawful discrimination in the following: employment, promotion or upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training, including apprenticeship. Contractors are required to provide a completed *Work Force Report*.

Equal Opportunity Contracting Program (EOCP) Work Force Report [rev. 12/01]

000279

## WORK FORCE REPORT - Page 2

NAME OF FIRM: \_\_\_\_\_ DATE: \_\_\_\_\_

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

- |  |  |
|--|--|
| (1) African-American, Black                          | (5) Filipino                                       |
| (2) Latino, Hispanic, Mexican-American, Puerto Rican | (6) Caucasian                                      |
| (3) Asian, Pacific Islander                          | (7) Other ethnicity; not falling into other groups |
| (4) American Indian, Eskimo                          |  |

OCCUPATIONAL CATEGORY	(1) African-American		(2) Latino		(3) Asian		(4) American Indian		(5) Filipino		(6) Caucasian		(7) Other Ethnicities	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Executive, Administrative, Managerial														
Professional Specialty														
Engineers/Architects														
Technicians and Related Support														
Sales														
Administrative Support/Clerical														
Services														
Precision Production, Craft and Repair														
Machine Operators, Assemblers, Inspectors														
Transportation and Material Moving														
Handlers, Equipment Cleaners, Helpers and Non-construction Laborers*														

\*Construction laborers and other field employees are not to be included on this page

TOTALS EACH COLUMN														
--------------------	--	--	--	--	--	--	--	--	--	--	--	--	--	--

GRAND TOTAL ALL EMPLOYEES														
---------------------------	--	--	--	--	--	--	--	--	--	--	--	--	--	--

INDICATE BY GENDER AND ETHNICITY THE NUMBER OF ABOVE EMPLOYEES WHO ARE DISABLED:

DISABLED														
----------	--	--	--	--	--	--	--	--	--	--	--	--	--	--

NON-PROFIT ORGANIZATIONS ONLY:

BOARD OF DIRECTORS														
VOLUNTEERS														
ARTISTS														

000280

## WORK FORCE REPORT - Page 3

NAME OF FIRM: \_\_\_\_\_ DATE: \_\_\_\_\_

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

- |  |  |
|--|--|
| (1) African-American, Black                          | (5) Filipino                                       |
| (2) Latino, Hispanic, Mexican-American, Puerto Rican | (6) Caucasian                                      |
| (3) Asian, Pacific Islander                          | (7) Other ethnicity; not falling into other groups |
| (4) American Indian, Eskimo                          |  |

OCCUPATIONAL CATEGORY	(1) African-American		(2) Latino		(3) Asian		(4) American Indian		(5) Filipino		(6) Caucasian		(7) Other Ethnicities	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Carpenter														
Drywall Installer														
Electrician														
Elevator Installers														
Finishers, Concrete or Terrazzo														
Glaziers														
Helpers, Construction Trade														
Ironworkers, Structural Metal Workers														
Laborers														
Millwrights														
Masons, Bricklayers														
Tilessetters														
Operators														
Painters														
Pipefitter, Plumbers														
Plasterers														
Roofers														
Security, Protective Services														
Sheet Metal, Duct Installers														
Welders, Cutters														
TOTALS EACH COLUMN														
GRAND TOTAL, ALL EMPLOYEES														

INDICATE BY GENDER AND ETHNICITY THE NUMBER OF ABOVE EMPLOYEES WHO ARE DISABLED:

DISABLED														
----------	--	--	--	--	--	--	--	--	--	--	--	--	--	--

000281

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**EXHIBIT H**  
**DRUG-FREE WORKPLACE CERTIFICATION**

**City of San Diego Drug-free Workplace Requirements**

**1. GENERAL:**

All City projects are now subject to City of San Diego Resolution No. R-277952 adopted on May 20, 1991. All bidders should be aware of the provisions of Council Policy 100-17 which was established by the above numbered resolution. The policy applies equally to the contractor and all subcontractors. The elements of the policy are outlined below.

**2. DEFINITIONS:**

**Drug-free workplace** - A site for the performance of work done in connection with a contract let by City of San Diego for the construction, maintenance, or repair of any facility or public work by an entity at which employees of the entity are prohibited from engaging in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in accordance with the requirements of this section.

**EMPLOYEE** - The employee of a contractor directly engaged in the performance of work pursuant to a contract as described herein Section 3, "City Contractor Requirements."

**CONTROLLED SUBSTANCE** - A controlled substance in schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. Sec. 812).

**Contractor** - The department, division, or other unit of a person or organization responsible to the contractor for the performance of a portion of the work under the contract.

**3. City Contractor Requirements:**

Every person or organization awarded a contract or grant by the City of San Diego for the provision of services shall certify to the City that it will provide a drug-free workplace by doing all following:

- a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's organization's workplace and specifying the actions that will be taken against employees for violations of the prohibition.
- b) Establishing a drug-free awareness program to inform employees about all of the following:
  - (1) The dangers of drug abuse in the workplace.
  - (2) The person's or organization's policy of maintaining a drug-free workplace.
  - (3) Any available drug counseling, rehabilitation, and employee assistance programs.
  - (4) The penalties that may be imposed upon employees for drug abuse violations.
- c) Posting the statement required by subdivision (1) in a prominent place at contractor's main office. For projects large enough to necessitate a construction trailer at the job site, the required signage would also be posted at the job site.

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Contractors shall include in each subcontract agreement language which indicates the subcontractor's agreement to abide by the provisions of subdivisions a) through c) above. Contractors and subcontractors shall be individually responsible for their own drug-free workplace programs.

Additionally, Contractors will submit the signed form included as Attachment 1, certifying compliance with San Diego City Council Policy No. 100-17 regarding Drug-Free Workplace.

Note: The requirements of a drug-free awareness program can be satisfied by periodic tailgate sessions covering the various aspects of drug-abuse education. Although an in-house employee assistance program is not required, contractors should be able to provide a listing of drug rehabilitation and counseling programs available in the community at large.

Questions about the City's Drug-free Workplace Policy should be referred to the Director, Purchasing & Contracting Department.

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ATTACHMENT 1 TO EXHIBIT H

CONTRACTOR CERTIFICATION  
REGARDING DRUG-FREE WORKPLACE COMPLIANCE

PROJECT TITLE: Design/Build Services for the Pump Station 1 and Pump Station 2, Electrical  
Upgrades and New Electrical Building at Pump Station No. 2 Project

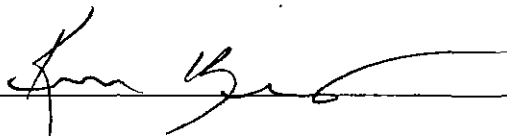
I hereby certify that I am familiar with the requirements of San Diego City Council Policy No. 100-17 regarding Drug-Free Workplace as outlined in EXHIBIT H – DRUG-FREE WORKPLACE CERTIFICATION of the project specifications, and that

Bergelectric Corp.

(Name under which business is conducted)

has in place a drug-free workplace program that complies with said policy. I further certify that each subcontract agreement for this project contains language which indicates the subcontractors agreement to abide by the provisions of the policy as outlined.

Signed



Printed Name Ken Bertalan

Title Sr. Vice President, Construction

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**EXHIBIT I****AMERICANS WITH DISABILITIES ACT REQUIREMENTS****1. GENERAL:**

All City projects are now subject to City of San Diego Resolution No. R-282153 adopted on June 14, 1993. All bidders should be aware of the provisions of Council Policy 100-04 which was established by the above numbered resolution. The policy applies equally to the contractor and all Subcontractors. The elements of the policy are outlined below.

**2. BACKGROUND:**

The issue of accessibility, both architecturally and programically by people with disabilities, to public and private entities has been addressed by Section 504 of the Rehabilitation Act of 1973, and most recently by the Americans with Disabilities Act (ADA) of 1990. This broad reaching legislation addresses the right of people with disabilities to obtain equal access to services, programs, buildings, facilities, and employment.

**3. PURPOSE:**

It is the intent of the City Council that the City of San Diego take a leadership role in addressing compliance with the ADA in the workplace. It is the purpose of this policy to establish the requirement that all City contractors, including but not limited to construction contracts, consultants, grantees, and providers of goods and services agree to comply with all applicable titles of the ADA.

**4. DEFINITIONS:**

- A. "Qualified individual with a disability" means an individual with a disability who satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.
- B. "Employee" means the employee of a contractor directly engaged in the performance of work pursuant to a contract as described in Section 2.
- C. "Contractor" means any person or entity who enters into an agreement with the City for the construction of capital improvements or the provision of goods or services. Contractor shall include, but not limited to consultants, grantees, lessees and vendors.

**5. CITY CONTRACTOR REQUIREMENTS:**

- A. Every person or organization entering into a contractual agreement with or receiving a grant from the City of San Diego shall certify to the City of San Diego that it will comply with the ADA by adhering to all of the provisions of the ADA listed below:
  - 1. Title I. Employment Mandates:

"No contractor may discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of

employment, training, compensation, benefits, discipline, layoffs, and termination of employment."

2. Title II. State and Local Government:

"No qualified individual with a disability may be excluded on the basis of disability, from participation in, or be denied the benefits of services, programs, or activities by contractors or Subcontractors providing services for the City."

3. Post a statement addressing the requirements of the ADA in a prominent place at the worksite.

- B. Contractors shall include in each Subcontract agreement, language which indicates the Subcontractor's agreement to abide by the provisions of subdivisions (1) through (3) inclusive of Section 2A. Contractors and Subcontractors shall be individually responsible for their own ADA employment programs.

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AMERICAN WITH DISABILITIES ACT (ADA) COMPLIANCE CERTIFICATION

PROJECT TITLE: Design/Build Services for the pump Station 1 and Pump Station 2, Electrical Upgrades and New Electrical Building at Pump Station No. 2 Project

I hereby certify that I am familiar with the requirements of San Diego City Council Policy No. 100-4 regarding the American With Disabilities Act (ADA) outlined in EXHIBIT "I" - AMERICANS WITH DISABILITIES ACT REQUIREMENTS of the project specifications, and that

Bergelectric Corp.

(Name under which business is conducted)

complies with said policy. I further certify that each Subconsultants/Subcontract agreement for this project contains language which indicates the Subconsultants/Subcontractors agreement to abide by the provisions of the policy as outlined.

Signed



Printed Name

Ken Bertalan

Title

Sr. Vice President, Construction

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## EXHIBIT J

## CALIFORNIA STATE REQUIREMENTS

NOTICE OF LABOR COMPLIANCE PROGRAM APPROVAL

The City of San Diego received initial approval as a Labor Compliance Program on August 11, 2003. The limited exemption from prevailing wages pursuant to Labor Code Section 1771.5(a) does not apply to contracts under jurisdiction of the Labor Compliance Program. Inquiries, questions, or assistance about the Labor Compliance Program should be directed to: Labor Compliance Program, 1200 Third Avenue, Suite 200, MS 56P, San Diego Ca 92101, Tel. 619-235-5740

**1. State Wage Determinations:**

- (a) As required by Sections 1720 et. seq., 1770 et. seq. and the following, of the California Labor Code, the CONTRACTOR shall pay not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations. Copies of such prevailing rate of per diem wages are on file at the office of the OWNER, which copies shall be made available to any interested party on request. Copies of the prevailing rate of per diem wages may also be found at [http://www.dir.ca.gov/dlsr/statistics\\_research.html](http://www.dir.ca.gov/dlsr/statistics_research.html). The CONTRACTOR shall post a copy of such determination at each job site.
- (b) In accordance with Section 1775 of the California Labor Code, the CONTRACTOR shall, as a penalty to the OWNER, forfeit not more than \$50.00 for each calendar day or portion thereof, for each worker paid less than the prevailing rates as determined by the Director for the work or craft in which the worker is employed for any public work done under the contract by him or her or by any Subcontractor under him or her.
- (c) A copy of the above General Prevailing Wage Determination is on file and available for inspection at the Purchasing & Contracting Department, 1200 Third Avenue, Suite 200, San Diego, California 92101.
- (d) The successful bidder intending to use a craft or classification not shown in the Prevailing Rate Determination may be required to pay the rate of the craft or classification most closely related to it.

**2. Workers' Compensation:**

- (a) In accordance with the provisions of Section 3700 of the California Labor Code, the CONTRACTOR shall secure the payment of compensation to his employees.
- (b) Prior to beginning work under the Contract, the CONTRACTOR shall sign and file with the OWNER the following certification:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the WORK of this Contract."
- (c) Notwithstanding the foregoing provisions, before the Contract is executed on behalf of the OWNER, a bidder to whom a contract has been awarded shall furnish satisfactory evidence that it has secured in the manner required and provided by law the payment of workers' compensation.

3. **Apprentices on Public Works:** The CONTRACTOR shall abide by the requirements of Sections 1777.5, 1777.6, and 1777.7 of the State of California Labor Code concerning the employment of apprentices by a Contractor and any Subcontractor performing a public works contract.
4. **Working Hours:** The CONTRACTOR shall comply with all applicable provisions of Section 1810 to 1815, inclusive, of the California Labor Code relating to working hours. The CONTRACTOR shall, as a penalty to the OWNER, forfeit \$25.00 for each worker employed in the execution of the Contract by the CONTRACTOR or by any Subcontractor for each calendar day during which such worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week, unless such worker receives compensation for all hours worked in excess of 8 hours at not less than 1-1/2 times the basic rate of pay.
5. **CONTRACTOR Not Responsible For Damage Resulting From Certain Acts of God:** As provided in Sections 7105 of the California Public Contract Code (A.B. 3416), the CONTRACTOR shall not be responsible for the cost of repairing or restoring damage to the WORK which damage is determined to have been proximately caused by an act of God, in excess of 5 percent of the contracted amount, provided, that the WORK damaged was built in accordance with accepted and applicable building standards and the plans and specifications of the OWNER. The CONTRACTOR shall obtain insurance to indemnify the OWNER for any damage to the WORK caused by an act of God if the insurance premium is a separate bid item in the bidding schedule for the WORK. For purposes of this Section, the term "acts of God" shall include only the following occurrences or conditions and effects: earthquakes in excess of a magnitude of 3.5 on the Richter Scale, and tidal waves.
6. **Milestone:** In accordance with the Sections 3086 and 3093 of the California Civil Code, within 10 days after date of acceptance of the WORK by the OWNER's governing body, the OWNER will file, in the County Recorder's office, a Milestone of the WORK.
7. **Unpaid Claims:** If, at any time prior to the expiration of the period for service of a stop notice, there is served upon the OWNER a stop notice as provided in Sections 3179 and 3210 of the California Civil Code, the OWNER shall, until the discharge thereof, withhold from the monies under its control so much of said monies due or to become due to the CONTRACTOR under this Contract as shall be sufficient to answer the claim stated in such stop notice and to provide for the reasonable cost of any litigation thereunder; provided, that if the CONSTRUCTION MANAGER shall, in its discretion, permit CONTRACTOR to file with the OWNER the bond referred to in Section 3196 of the Civil Code of the State of California, said monies shall not thereafter be withheld on account of such stop notice.
8. **Concrete Forms, Falsework, and Shoring:** The CONTRACTOR shall comply fully with the requirements of Section 1717 of the Construction Safety Orders, State of California, Department of Industrial Relations, regarding the design of concrete forms, falsework and shoring, and the inspection of same prior to placement of concrete. Where the said Section 1717 requires the services of a civil engineer registered in the State of California to approve design calculations and working drawings of the falsework or shoring system, or to inspect such system prior to placement of concrete, the CONTRACTOR shall employ a registered civil engineer for these purposes, and all costs therefore shall be included in the price named in the Contract for completion of the WORK as set forth in the Contract Documents.
9. **Retention From Monthly Payments:** Pursuant to Section 22300 of the California Public Contract Code, the CONTRACTOR may substitute securities for any money withheld by the OWNER to insure performance under the Contract. At the request and expense of the CONTRACTOR, securities equivalent to the amount withheld shall be deposited with the OWNER or with a state or federally chartered bank as the escrow agent, who shall return such securities to the CONTRACTOR upon satisfactory completion of the Contract. Deposit of securities with an escrow agent shall be subject to a written agreement between

the escrow agent and the OWNER which provides that no portion of the securities shall be paid to the CONTRACTOR until the OWNER has certified to the escrow agent, in writing, that the Contract has been satisfactorily completed. The OWNER will not certify that the Contract has been satisfactorily completed until at least 30 days after filing by the OWNER of a Milestone. Securities eligible for investment under Section 22300 shall be limited to those listed in Section 16430 of the Government Code and to bank or savings and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the CONTRACTOR and the OWNER.

10. **Public Works Contracts; Assignment to Awarding Body:** In accordance with Section 7103.5(b) of the California Public Contract Code (A.B. 3416), the CONTRACTOR and Subcontractors shall conform to the following requirements. In entering into a public works contract or a Subcontract to supply goods, services, or materials pursuant to a public works contract, the CONTRACTOR or Subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code). arising from purchases of goods, services, or materials pursuant to the public works contract or the Subcontract. This assignment shall be made and become effective at the time the awarding body tenders to the CONTRACTOR, without further acknowledgment by the Parties.

11. **Payroll Records; Retention; Inspection; Noncompliance Penalties; Rules and Regulations:**

- (a) In accordance with Section 1776 of the California Labor Code each contractor and Subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work.
- (b) The payroll records enumerated under Paragraph 11(a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the CONTRACTOR on the following basis:
  - (1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.
  - (2) A certified copy of all payroll records enumerated in Paragraph 11(a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.
  - (3) A certified copy of all payroll records enumerated in Paragraph 11(a) shall be made available upon request by the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the body awarding the contract, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to Paragraph 11(b)(2) the requesting Party shall, prior to being provided the records, reimburse the costs of preparation by the CONTRACTOR, Subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of the CONTRACTOR.
- (c) Each contractor shall file a certified copy of the records, enumerated in Paragraph 11(a) with the entity that requested the records within 10 days after receipt of a written request.

- (d) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of the CONTRACTOR awarded the contract or performing the contract shall not be marked or obliterated.
- (e) The CONTRACTOR shall inform the body awarding the contract of the location of the records enumerated under Paragraph 11(a) including the street address, city and county, and shall, within 5 working days, provide a notice of change of location and address.
- (f) In the event of noncompliance with the requirements of this Section, the CONTRACTOR shall have 10 days in which to comply subsequent to receipt of written notice specifying in what respects the CONTRACTOR must comply with this Section. Should noncompliance still be evident after the 10-day period, the CONTRACTOR shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due.

12. **Cultural Resources:** The CONTRACTOR's attention is directed to the provisions of the Clean Water Grant Program Bulletin 76A which augments the National Historic Preservation Act of 1966 (16 U.S.C. 470) as specified under Section [01560], "Temporary Environmental Controls" of the General Requirements.
13. **Permits Required for Hazardous Employment:** The CONTRACTOR shall comply with all applicable provisions of Section 6500 of the California Labor Code relating to those employments or places of employment that by the nature involve substantial risk of injury.
14. **Protection of Workers In Trench Excavations:** As required by Section 6705 of the California Labor Code and in addition thereto, whenever work under the Contract involves the excavation of any trench or trenches 5 feet or more in depth, the CONTRACTOR shall submit for acceptance by the OWNER or by a registered civil or structural engineer, employed by the OWNER, to whom authority to accept has been delegated, in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation, of such trench or trenches. If such plan varies from the shoring system standards established by the Construction Safety Orders of the Division of Industrial Safety, the plan shall be prepared by a registered civil or structural engineer employed by the CONTRACTOR, and all costs therefore shall be included in the price named in the Contract for completion of the WORK as set forth in the Contract Documents. Nothing in this Section shall be deemed to allow the use of a shoring, sloping, or other protective system less effective than that required by the Construction Safety Orders. Nothing in this Section shall be construed to impose tort liability on the OWNER, the CONSTRUCTION MANAGER, the DESIGN CONSULTANT or any of their officers, agents, representatives, or employees.
15. **Travel and Subsistence Pay:**
  - (a) As required by Section 1773.8 of the California Labor Code, the CONTRACTOR shall pay travel and subsistence payments to each workman needed to execute the WORK, as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed in accordance with this Section.



- (b) To establish such travel and subsistence payments, the representative of any craft, classification or type of workman needed to execute the contracts shall file with the Department of Industrial Relations fully executed copies of collective bargaining agreements for the particular craft, classification or type of work involved. Such agreements shall be filed within 10 days after their execution and thereafter shall establish such travel and subsistence payments whenever filed 30 days prior to the call for bids.

**16. Removal, Relocation, or Protection to Existing Utilities:**

- (a) In accordance with the provisions of Section 4215 of the California Government Code, any contract to which a public agency as defined in Section 4401 is a Party, the public agency shall assume the responsibility, between the Parties to the contract, for the timely removal, relocation, or protection of existing main or trunkline utility facilities located on the site of any construction project that is a subject of the contract, if such utilities are not identified by the public agency in the plans and specifications made a part of the invitation for bids. The agency will compensate CONTRACTOR for the costs of locating, repairing damage not due to the failure of the CONTRACTOR to exercise reasonable care, and removing or relocating such utility facilities not indicated in the plans and specifications with reasonable accuracy, and for equipment on the project necessarily idled during such work.
- (b) The CONTRACTOR shall not be assessed Liquidated Damages for delay in completion of the project, when such delay was caused by the failure of the public agency or the owner of the utility to provide for removal or relocation of such utility facilities.
- (c) Nothing herein shall be deemed to require the public agency to indicate the presence of existing service laterals or appurtenances when the presence of such utilities on the site of the construction project can be inferred from the presence of other visible facilities, such as buildings, meter and junction boxes, on or adjacent to the site of construction; provided, however, nothing herein shall relieve the public agency from identifying main or trunklines in the plans and specifications.
- (d) If the CONTRACTOR while performing the contract discovers utility facilities not identified by the public agency in the contract plans or specifications, he shall immediately notify the public agency and utility in writing.
- (e) The public utility, where they are the owner, shall have the sole discretion to perform such repairs or relocation work or permit the CONTRACTOR to do such repairs or relocation work at a reasonable price.

- 17. Contractor License Requirements:** In accordance with Section 7028.15 of the California Business and Professions Code, a licensed contractor shall not submit a bid to a public agency unless his or her contractor's license number appears clearly on the bid, and the license expiration date is stated. Any bid not containing this information, or a bid containing information which is subsequently proven false, shall be considered non-responsive and shall be rejected by the public agency.

**18. Certain Claims:**

- (a) Notwithstanding the foregoing, any demand of \$375,000, or less, by the CONTRACTOR for a time extension; payment of money or damages arising from the work done by or on behalf of the CONTRACTOR pursuant to this contract; or payment of an amount which is disputed by the OWNER shall be processed in accordance with the provisions of Public Contracts Code Section 20104 et seq. relating to informal conferences, non-binding judicially supervised mediation and judicial arbitration.

- (b) A single written claim shall be filed under this section prior to this date of final payment for all demands arising out of the contract.
- (c) Within thirty (30) days of the receipt of the claim, the OWNER may request additional documentation supporting the claim or relating to defenses or claims the OWNER may have against the CONTRACTOR. If the amount of the claim is less than \$50,000, the CONTRACTOR shall respond to the request for additional information within fifteen (15) days after the receipt of the request. The CONTRACTOR shall respond to the request within thirty (30) days of receipt if the amount of the claim exceeds \$50,000 but is less than \$375,000.
- (d) Unless further documentation is requested, the OWNER shall respond to the claim within forty-five (45) days if the amount of the claim is less than \$50,000 or within sixty (60) days if the amount of the claim is more than \$50,000 but less than \$375,000. If further documentation is requested, the OWNER shall respond within the same amount of time taken by the CONTRACTOR to respond or fifteen (15) days, whichever is greater, after receipt of further information if the claim is less than \$50,000. If the claim is more than \$50,000 but less than \$375,000 and further documentation is requested by the OWNER, the OWNER shall respond within the same amount of time taken by the CONTRACTOR to respond or thirty (30) days, whichever is greater.
- (e) If the CONTRACTOR disputes the OWNER's response, or the OWNER fails to respond, the CONTRACTOR may demand an informal conference to meet and confer for settlement of the issues in dispute. The demand shall be served on the OWNER within fifteen (15) days after the deadline of the OWNER to respond or within fifteen (15) days of the OWNER's response, whichever occurs first. The OWNER shall schedule the meet and confer conference within thirty (30) days of the request.
- (f) If the meet and confer conference does not produce a satisfactory request, the CONTRACTOR may pursue remedies authorized by law.

**EXHIBIT K**

**DESIGNATION OF AUTHORIZED REPRESENTATIVES**

**City Management of PS1 and PS2 Electrical Upgrade and New Building at PS2 Project**

Senior Project Manager/Engineer:

Hossein Azar

Phone: (619) 533-4102

Senior Civil Engineer

600 B Street, Suite 600

San Diego, CA 92101

Project Manager/ Project Engineer:

Chisti Dadachanji

600 B Street, Suite 800

San Diego, CA 92101

Phone (619) 533-4648

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**EXHIBIT L**  
**PAYMENT AND PERFORMANCE BONDS**

000299

Issued in Quadruplicate

72BCSEY3861

Premium included in  
Performance Bond

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS,

That Bergelectric Corp. as CONTRACTOR,  
and Hartford Fire Insurance Company as Surety,  
are held and firmly bound unto City of San Diego  
hereinafter called "OWNER," in the sum of Eight Million One Hundred Ninety-Seven Thousand  
and NO/100\* (\$8,197,000.00\*) dollars,

for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, said CONTRACTOR has been awarded and is about to enter into the annexed Agreement with said OWNER to perform the WORK as specified or indicated in the Contract Documents entitled \_\_\_\_\_

Design/Build Services for the Pump Station 1 and Pump Station 2

Pump 1 (East Harbor Dr.) Pump 2(North Harbor Dr.) San Diego, CA

NOW, THEREFORE, if said CONTRACTOR, its subcontractors, its heirs, executors, administrators, successors, or assigns, shall fail to pay for any materials, provisions, equipment or other supplies used in, upon, for or about the performance of the WORK contracted to be done, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Code, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the CONTRACTOR and its subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such labor, all as required by the provisions of Title XV, Chapter 7, Sections 3247-3252 inclusive, of the Civil Code of the State of California and acts amendatory thereof, and sections of other codes of the State of California referred to therein and acts amendatory thereof, and provided that the persons, companies or corporations so furnishing said materials, provisions, equipment or other supplies, appliances or power used in, upon, for or about performance of the work contracted to be executed or performed, or any person, company or corporation renting or hiring implements or machinery or power for or contributing to said work to be done, or any person who performs work or labor upon the same, or any person who supplies both work and materials therefore, shall have complied with the provisions of said laws, then said Surety will pay the same in an amount not exceeding the sum hereinabove set forth and also will pay, in case suit is brought upon this bond, a reasonable attorney's fee, as shall be fixed by the Court. This bond shall inure to the benefit of any and all persons named in Section 3181 of the Civil Code of the State of California so as to give a right of action to them or their assigns in any suit brought upon this bond.

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PROVIDED, that any alterations in the WORK to be done or the materials to be furnished, or changes in the time of completion, which may be made pursuant to the terms of said Contract Documents, shall not in any way release said CONTRACTOR or said Surety thereunder, nor shall any extensions of time granted under the provisions of said Contract Documents release either said CONTRACTOR or said Surety, and notice of such alterations or extensions of the Agreement is hereby waived by said Surety.

SIGNED AND SEALED, this 11th. day of August, 2008

Bergelectric Corp. (SEAL)  
CONTRACTOR

Hartford Fire Insurance Company (SEAL)  
Surety

One Pointe Dr., Suite 325  
Address of Surety

Brea, CA 92821  
Address of Surety (City & State)

Glenn Arakaki, 714-674-1315  
Authorized Representative and Telephone No.

By: [Signature]  
Principal  
Ken Bertalan, Sr. VP, Construction

Approved as to Form and Legality:  
Michael J. Aguirre, City Attorney

BY \_\_\_\_\_  
Deputy City Attorney

By: [Signature]  
Andrew Holloway, Attorney-in-fact

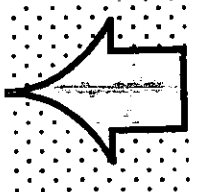
Approved:

\_\_\_\_\_  
Jay Goldstone  
Chief Operating Officer

Bond No. 72BCSEY3861

Premium \$ Included in Performance Bond

- END OF PAYMENT BOND -



# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of OrangeOn August 11, 2008

Date

before me, Melissa Marie Bentley-Ochoa, Notary Public

Here Insert Name and Title of the Officer

personally appeared Andrew Holloway

Name(s) or Signer(s)



who proved to me on the basis of satisfactory evidence to be the person~~(s)~~ whose name~~(s)~~ is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity~~(ies)~~, and that by his/~~her/their~~ signature~~(s)~~ on the instrument the person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature

Signature of Notary Public

## OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document*

### Description of Attached Document

Title or Type of Document new bond 72bcsey3861Document Date: 08/11/08Number of Pages: 2

Signer(s) Other Than Named Above! \_\_\_\_\_

### Capacity(ies) Claimed by Signer(s)

Signer's Name: Andrew Holloway☐ Individual☐ Corporate Officer —Title(s): \_\_\_\_\_☐ Partner ☐ Limited ☐ General☒ Attorney in Fact☐ Trustee☐ Guardian or Conservator

Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

Signer's Name: \_\_\_\_\_

☐ Individual☐ Corporate Officer —Title(s): \_\_\_\_\_☐ Partner ☐ Limited ☐ General☐ Attorney in Fact☐ Trustee☐ Guardian or Conservator

Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

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OF SIGNER  
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# 000302 POWER OF ATTORNEY

Direct Inquiries/Claims to:

THE HARTFORD

BOND, T-4

P.O. BOX 2103, 690 ASYLUM AVENUE  
HARTFORD, CONNECTICUT 06115

call: 888-266-3488 or fax: 860-757-5835

Agency Code: 72 186268

KNOW ALL PERSONS BY THESE PRESENTS THAT:

- ☒ Hartford Fire Insurance Company, a corporation duly organized under the laws of the State of Connecticut  
☐ Hartford Casualty Insurance Company, a corporation duly organized under the laws of the State of Indiana  
☐ Hartford Accident and Indemnity Company, a corporation duly organized under the laws of the State of Connecticut  
☐ Hartford Underwriters Insurance Company, a corporation duly organized under the laws of the State of Connecticut  
☐ Twin City Fire Insurance Company, a corporation duly organized under the laws of the State of Indiana  
☐ Hartford Insurance Company of Illinois, a corporation duly organized under the laws of the State of Illinois  
☐ Hartford Insurance Company of the Midwest, a corporation duly organized under the laws of the State of Indiana  
☐ Hartford Insurance Company of the Southeast, a corporation duly organized under the laws of the State of Florida

having their home office in Hartford, Connecticut (hereinafter collectively referred to as the "Companies") do hereby make, constitute and appoint, **up to the amount of UNLIMITED**

R.S. REHRER, GLENN ARAKAKI, ANDREW HOLLOWAY, LESLIE FARNSWORTH, DENISE M.P. EBY,  
MELISSA BENTLEY OF BREA, CALIFORNIA

their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign its name as surety(ies) only as delineated above by ☒, and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

In Witness Whereof, and as authorized by a Resolution of the Board of Directors of the Companies on January 22, 2004, the Companies have caused these presents to be signed by its Assistant Vice President and its corporate seals to be hereto affixed, duly attested by its Assistant Secretary. Further, pursuant to Resolution of the Board of Directors of the Companies, the Companies hereby unambiguously affirm that they are and will be bound by any mechanically applied signatures applied to this Power of Attorney.



*Paul A. Bergenholtz*

Paul A. Bergenholtz, Assistant Secretary

*M. Ross Fisher*

M. Ross Fisher, Assistant Vice President

STATE OF CONNECTICUT

COUNTY OF HARTFORD

ss. Hartford

On this 3<sup>rd</sup> day of March, 2008, before me personally came M. Ross Fisher, to me known, who being by me duly sworn, did depose and say: that he resides in the County of Hartford, State of Connecticut; that he is the Assistant Vice President of the Companies, the corporations described in and which executed the above instrument; that he knows the seals of the said corporations; that the seals affixed to the said instrument are such corporate seals; that they were so affixed by authority of the Boards of Directors of said corporations and that he signed his name thereto by like authority.



CERTIFICATE

*Scott E. Pascka*

Scott E. Pascka  
Notary Public

My Commission Expires October 31, 2012

I, the undersigned, Assistant Vice President of the Companies, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is still in full force effective as of  
Signed and sealed at the City of Hartford.

AUG 11 2008

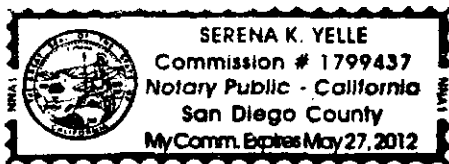


*Gary W. Stumper*

Gary W. Stumper, Assistant Vice President

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of San DiegoOn August 12, 2008 before me, Serena K. Yelle, Notary Public  
Date Here Insert Name and Title of the Officerpersonally appeared Ken Bertalan  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature Serena K. Yelle  
Signature of Notary Public

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

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OF SIGNER**  
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Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

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OF SIGNER**  
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**Exhibit "M"**  
**WATER POLLUTION CONTROL**

**WPCP IN SPECIFICATIONS (Nov 05)****1.0 WATER POLLUTION CONTROL**

The CONTRACTOR shall comply with all applicable standards, rules regulations, orders and requirements issued under Section 508 of the Clean Water Act (33 U.S.C. 1368) Executive Order 11738, the San Diego Municipal Code and all applicable federal, state and City standards, rules, regulations, orders and requirements. The following is a list of definitions used in this section:

**Best Management Practice (BMP):** (1) A method that is implemented to protect water quality and reduce the potential for pollution associated with storm water runoff and construction activities (2) any program, technology, process, siting criteria, operating method, measure, or device that controls, prevents, removes, or reduces pollution.

**Clean Water Act (CWA):** The Federal Water Pollution Control Act enacted in 1972 by Public Law 92-500 and amended by the Water Quality Act of 1987. The Clean Water Act prohibits the discharge of pollutants to Waters of the United States unless said discharge is in accordance with an NPDES permit. The 1987 amendments include guidelines for regulating municipal, industrial, and construction storm water discharges under the NPDES program.

**Maximum Extent Practicable (MEP):** The technology-based standard established by Congress in the Clean Water Act 402(p)(3)(B)(iii) that municipal discharges of urban runoff must meet. MEP generally emphasizes pollution prevention and source control BMP's primarily (as the first line of defense) in combination with treatment methods serving as a backup (additional lines of defense).

**National Pollutant Discharge Elimination System (NPDES):** Environmental Protection Agency's program to control the discharge of pollutants to waters of the United States. NPDES is a part of the federal CWA, which requires point and non-point source discharges to obtain permits. These permits are referred to as NPDES permits.

**Qualified Contact Person (QCP):** The QCP shall be trained and competent in the use of BMP's and shall be on site daily to evaluate the conditions of the site with respect to storm water pollution prevention.

**Water Pollution Control Plan (WPCP):** A plan required by the City Storm water Standards Manual that shall indicate BMP placement and methods to prevent storm water pollution and non-storm water discharges. The WPCP is required for sites with less than 1 acre of ground disturbance inclusive of any unpaved areas associated with the project.

**Weather Triggered Action Plan (WTAP):** A plan to deploy standby BMP's as needed to protect the exposed portions of the site within 24 hours of prediction of a storm event (a predicted storm event is defined as a forecasted, 40% chance of rain).

**1.1 SITE MANAGEMENT**

The Contractor shall prepare a WPCP as required for all projects under one acre in ground disturbance. The WPCP shall be submitted to the Resident Engineer at the Preconstruction Meeting. The WPCP shall follow the requirements as outlined in Appendix E of the City of San Diego Storm Water Standards Manual and must be submitted prior to the start of construction activities. The WPCP shall be kept at the construction site and made available at all times. The CONTRACTOR shall implement and update the WPCP when necessary, monitor the construction site, and maintain BMP's in effective working condition.

The CONTRACTOR shall do the following:

- A. Designate a QCP that shall be responsible for the implementation, maintenance and improvement of the BMP's and WPCP. The QCP shall be trained and competent in the use of BMP's and shall be on site daily to evaluate the conditions of the site with respect to storm water pollution prevention.

The QCP shall be responsible for monitoring the weather and implementation of any emergency plans that shall be activated when there is a 40% or greater chance of rain. The weather shall be monitored with the National Weather Service at <http://www.nws.noaa.gov> on a 5-day forecast plan.

The QCP shall be responsible for overseeing any site grading and construction operations, and for evaluating the effectiveness of the BMP's. The QCP shall ensure the modification of the BMP's as necessary to keep the site in compliance and to ensure adequate, routine maintenance of the BMP's.

- B. Educate all SUBCONTRACTORS and employees about storm water pollution prevention measures required during construction activities to prevent the impact of construction discharges to the storm water conveyance system. Education requirements shall be in accordance with Section F.2.J of the San Diego Regional Water Quality Control Board (SDRWQCB) Order No. 2001-1, dated February 21, 2001. The CONTRACTOR shall ensure that all personnel are trained in basic storm water construction management. A log of the trained staff and the educational materials shall be kept in the WPCP file and available upon request by the Resident Engineer.
- C. Protect all new and existing storm water conveyance systems from sedimentation, concrete rinse, or other construction related debris and discharges with the appropriate BMP's that are acceptable to the Resident Engineer and as indicated in the WPCP.
- D. Indicate in the WPCP the locations of BMP's (ie, concrete wash out, vehicle maintenance, staging and storage area protection, etc.) to be implemented. The CONTRACTOR shall ensure that these areas will be utilized properly and maintained regularly.
- E. The CONTRACTOR shall be responsible for ensuring that all waste and debris generated during the period of construction is contained within the storage/staging area or properly disposed. No sediment, oil, or contaminated run-off shall be allowed out of the staging/storage area. Perimeter and run-off control measures shall be installed around the staging/storage area. The entrance to the construction staging/storage area shall have stabilized gravel entrances/roadways, metal pans to loosen dirt from tires, or the like, to

reduce tracking and create a sediment barrier between the storage/staging area and the roadway.

- F. Inspect and document monthly at a minimum or as directed by the Resident Engineer, all BMP's during the **dry season, May 1 through September 30**. Inspect and document weekly, at a minimum or as directed by the Resident Engineer, all BMP's during the **rainy season October 1 through April 30**. The CONTRACTOR shall include documentation in the WPCP that BMP's were inspected at the intervals required and shall update and maintain this documentation for the duration of the project. The WPCP and the updates shall be available to the Resident Engineer upon request.
- G. Conduct visual inspections daily and maintain all BMP's as needed. Visual Inspections and maintenance of all BMP's shall be conducted before, during and after every rain event and every 24 hours (at a minimum) during any prolonged rain event. The CONTRACTOR shall maintain and repair all BMP's as soon as possible as safety allows.
- H. If a non-storm water discharge leaves the project site, the CONTRACTOR shall immediately stop the activity and repair the damages. The CONTRACTOR shall immediately notify the Resident Engineer of the discharge. As soon as practical, any and all waste material, sediment and debris from each non storm water discharge shall be removed from the storm drain conveyance system and properly disposed of by the CONTRACTOR at no cost to the City.

All work, materials, labor, costs and time associated with maintenance and upkeep of the Water Pollution Control Document shall be included in the lump sum bid item to maintain and update the Water Pollution Control Document for the project bid schedule. All work, materials, labor, costs and time associated with the above requirements as described under this Section 1.1 shall be included in the project bid items when no specific bid item is provided in the bid schedule.

## 1.2 PERFORMANCE STANDARDS

The CONTRACTOR shall be responsible for implementing all water pollution control measures based on performance standards. Performance standards shall include:

- A. Non-storm water discharges from the site shall not occur to the MEP. All storm water discharges shall be free of pollutants including sediment to the MEP.
- B. Erosion shall be controlled by acceptable BMP's to the MEP. If rills and gullies appear they shall be repaired and additional BMP's installed to prevent a reoccurrence of erosion.
- C. An inactive site must be protected to prevent pollutant discharges. A site or portions of a site, shall be considered inactive when construction activities have ceased for a period of seven (7) or more consecutive calendar days.
- D. Good housekeeping BMP's shall be implemented and maintained at all times during construction. The CONTRACTOR is responsible for clean-up of debris, concrete waste, sweeping, and dust control. Construction debris and waste shall be contained and disposed of properly. Access locations shall be kept clean and swept daily or more often as needed to assure no sediment leaves the construction site. The surrounding public streets shall be kept

clean and swept daily and as needed to keep sediment out of the storm drain conveyance system.

- E. The CONTRACTOR shall defend, indemnify, protect, and hold harmless the City, its agents, officers, and employees, from and against all claims asserted, or liability established for damages, obligations, penalties, fines, actions (including remedial or enforcement actions of any kind and administrative or judicial proceedings, orders, or judgments), and costs resulting from any violations, failure to implement, maintain, or follow Best Management Practices, and/or losses arising out of or resulting from discharge of storm water containing sediment or other pollutants from the Project to the waters of the City's Storm Water Conveyance System, State or United States in quantities or concentrations exceeding those which would have occurred in the pre-construction condition of the Project and/or the discharge of any other contaminants in storm water that cause or contribute to the exceedance of a water quality objective for the receiving water as established in the San Diego Municipal Storm Water Permit and Water Quality Control Plan for the San Diego Basin (9). The CONTRACTOR's duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of the City, its agents, officers or employees.

The CONTRACTOR shall implement BMP's in accordance with the California Storm Water Quality Association (CASQA) handbooks ([www.cabmphandbooks.org](http://www.cabmphandbooks.org)) and in accordance with the California General Permit for Construction Activities ([www.swrcb.ca.gov/stormwtr/gen\\_const.html#const\\_permit](http://www.swrcb.ca.gov/stormwtr/gen_const.html#const_permit)). It is the CONTRACTOR's responsibility on both active and inactive sites to implement BMP's for all potential pollutant discharges.

#### 1.2.1 DRY SEASON REQUIREMENTS (MAY 1 THROUGH SEPTEMBER 30)

- A. Perimeter protection BMP's shall be installed and maintained to comply with the performance standards listed in section 1.2.
- B. Sediment control BMP's shall be installed and maintained to comply with the performance standards listed in section 1.2.
- C. Sediment tracking control BMP's shall be installed and maintained at site entrances and exits to comply with the performance standards listed in section 1.2.
- D. Standby BMP materials necessary to protect the site against erosion, to prevent sediment discharge, and to prevent non storm water discharges shall be stored on site and readily accessible.
- E. The CONTRACTOR shall have an approved WTAP and have the ability to install standby BMP's to protect the site to the MEP within 24 hours of prediction of a storm event defined as a forecasted, 40% or greater chance of rain. On request, the CONTRACTOR shall provide proof of this capability that is acceptable to the RE.
- F. The amount of exposed soil allowed at one time shall not exceed that which can be adequately protected by deploying standby erosion control and sediment control BMP's prior to a predicted storm event.

### 1.2.2 RAINY SEASON REQUIREMENTS (OCTOBER 1 THROUGH APRIL 30)

In addition to the requirements listed under the Dry Season Requirements, the following shall be required during the rainy season:

- A. Erosion control BMP's shall be adequate to the MEP to provide protection for storm events, during the rainy season.
- B. Perimeter protection and sediment control BMP's shall be adequate and to the MEP upgraded as necessary to provide sufficient protection for storms likely to occur during the rainy season.
- C. Physical or vegetation erosion control BMP's shall be installed and established for all completed construction areas prior to the start of the rainy season, and shall comply with the performance standards listed in section 1.2. These BMP's shall be maintained throughout the rainy season. If a BMP fails, it shall be repaired and improved, or replaced with an acceptable alternate as soon as safety allows.
- D. A disturbed area that is not being actively graded or excavated for seven (7) or more consecutive calendar days must be fully protected from erosion. The weather triggered action plan shall apply to inactive areas.

### 1.3 CONSTRUCTION BMP's

It is the responsibility of the CONTRACTOR to select, install and maintain appropriate BMP's in accordance with these specifications. It is the CONTRACTOR's responsibility to ensure that the BMP's are operational and working properly. BMP's shall be installed in accordance with California Storm Water BMP handbooks ([www.cabmphandbooks.org](http://www.cabmphandbooks.org)) and in accordance with the California General Permit for Construction Activities ([www.swrcb.ca.gov/stormwtr/gen\\_const.html#const\\_permit](http://www.swrcb.ca.gov/stormwtr/gen_const.html#const_permit)).

All BMP measures shall be identified in the WPCP. A cost breakdown for the lump sum BMP items shall be provided before the notice to proceed is issued. The CONTRACTOR shall submit deviations or modifications to Resident Engineer.

#### 1.3.1 EROSION CONTROL

The CONTRACTOR shall be responsible for selecting and maintaining erosion control BMP's for all construction activities for the duration of the project. Erosion control BMP's shall include the materials and measures to prevent pollutant discharges to the MEP from occurring. All work, materials, labor, costs, and time associated with erosion control BMP's shall be included in the lump sum price for erosion control for the project bid schedule.

#### 1.3.2 SEDIMENT CONTROL

Adequate sediment control is required for all construction activities that may generate pollutants. The CONTRACTOR shall be responsible for selecting and maintaining sediment control BMP's

for the duration of the project. Sediment control BMP's shall include the materials and measures to prevent pollutant discharges to the MEP from occurring. All work, materials, labor, costs, and time associated with sediment control BMP's shall be included in the lump sum price for sediment control in the project bid schedule.

### 1.3.3 STORM DRAIN INLET PROTECTION

Storm drain inlet protection shall be installed and maintained throughout construction and removed when project is completed and there is no longer a potential to discharge pollutants.

The CONTRACTOR shall be responsible for preventing any flooding associated with storm drain inlet protection. The area around the inlet shall allow water to pond without flooding the traveled way, structures and private property. Any BMP's temporarily removed by the Contractor to alleviate flooding shall be replaced or modified immediately as safety allows.

The storm drain inlet sediment control measures shall not impede the safe flow of traffic. The storm drain inlet sediment control measures shall be of sufficient weight so as not to shift out of place, or shall be secured in place against movement.

Inlet sediment control measures shall be maintained daily or more often as needed. Maintaining inlet sediment control measures shall include but not be limited to replacing damaged BMP's, removing and disposing of accumulated sediment, trash & debris. Waste materials shall be removed and disposed in accordance with the Greenbook (Standard Specification for Public Works Construction (SSPWC)).

Storm drain inlet protection will be measured and paid per number of inlets protected as listed in the unit bid price.

### 1.3.4 NON-STORM WATER AND MATERIALS MANAGEMENT BMP'S

The WPCP shall include pollution control measures and associated locations for equipment maintenance, fueling, concrete washouts, cleaning and storage.

The CONTRACTOR shall avoid placing stock piles in any drainage path. The Resident Engineer may approve temporary stockpiling in a drainage path provided that measures are taken to allow unimpeded drainage, and sediment transport is prevented. Regardless of the location of stockpiled materials, containment measures are to be employed to control dust and sediment movement arising from wind, rain, and/or runoff. Controlling measures include but are not limited to covering the stockpiled material and the installation of protection around the perimeter of the stockpiled material during rain events and winds.

The lump sum price for Non-Stormwater and Materials Management BMP's shall cover all pollution control measures for equipment maintenance, fueling, cleaning, materials management and storage.

### 1.3.5 STREET SWEEPING

The CONTRACTOR shall sweep the streets impacted by construction activities daily, and as often as needed, with a motor sweeper in accordance with section 7-8.1 of the Greenbook (Standard



Specification for Public Works Construction (SSPWC)). Blowers shall not be used on site. The lump sum price for street sweeping shall cover all street sweeping, equipment, labor, and related activities.

#### 1.3.6 WEATHER TRIGGERED ACTION PLAN

The CONTRACTOR shall prepare a written Weather Triggered Action Plan (WTAP) prior to the start of construction. The CONTRACTOR shall implement the WTAP within 24 hours of a predicted storm event (a predicted storm event is defined as a forecasted 40% or greater chance of rain). Rain forecasts can be found at [www.nws.noaa.gov](http://www.nws.noaa.gov). The WTAP shall identify the staffing responsible for implementing, monitoring and maintaining the BMP's prior to and during the storm event, and shall identify on site availability of BMP's that will be installed on the exposed portions of the site to minimize erosion and sediment discharges, and prevent non-storm water discharges from leaving the site to the MEP. The WTAP shall be filed in the SWPPP, WPCP, TIER I, or TIER II document and updated as site conditions change

The lump sum bid price for the WTAP shall include all work necessary to prepare the WTAP, and all costs associated with the effective implementation of the WTAP for the duration of the project.

#### 1.4 INLET MARKERS

Mark every storm drain inlet within the projects boundaries with adhesive decal-discs or an imbedded concrete stamp. The CONTRACTOR shall use decal-discs on existing inlets and concrete stamps on new inlets. The concrete stamp is available from the Resident Engineer with five days advance notice. On curb inlets the concrete stamp or decal discs shall be placed on the top of curb at the inlet roof. On catch basins, the concrete stamp shall be imprinted next to the inlet grate. Any and all costs associated with this work shall be included in the storm drain marker unit bid price.

**HAZARDOUS MATERIALS**

**1.0 CITY Responsibility** - the City shall be responsible for any hazardous material which includes hazardous substances and hazardous waste as defined by Section 25316 and 25117 of the Health and Safety Code, uncovered or revealed at the site which was not identified in the Contract Documents to be within the scope of the WORK. The City shall not be responsible for any such materials brought to the site by the Design/Builder, Subcontractors, Suppliers or anyone else for whom the Design/Builder is responsible.

**2.0 DESIGN/BUILDER's Responsibility**

**2.1** When such hazardous material is encountered, the Design/Builder shall immediately stop all Work in connection with such hazardous condition in any area affected thereby (except in an emergency as set forth below), and notify the City in writing. The City shall promptly evaluate such hazardous condition and take corrective action. The Design/Builder shall not be required to resume work in any such affected area until after the City has delivered to the Design/Builder written notice specifying that such condition and any affected area has been rendered safe for the resumption of work, or specifying any special conditions under which such work may be resumed safely.

**2.2 Hazardous Communication Program**

**2.2.1** Notification to employees is required when materials that contain hazardous substances or mixtures are required on the WORK. A Material Safety Data Sheet as described in Section 5194 of the California Code of Regulations shall be requested by the Design/Builder from the manufacturer of any hazardous product used.

**2.2.2** Material usage shall be accomplished with strict adherence to California Division of Industrial Safety requirements and all manufacturer's warnings and application instructions listed on the Material Safety Data Sheet and on the product container label.

**2.2.3** The Design/Builder shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the site in accordance with Laws or Regulations, with copies to the City.

**2.2.4 Unsafe Products** - The Design/Builder shall notify the City if it considers a specified or required product or its intended usage to be unsafe. This notification must be given to the City prior to the product being ordered, or if provided by some other party, prior to the product being used or incorporated in the WORK.

**2.2.5 Safety Measures In Bid** - Payment for performing all work necessary to provide safety measures shall be included in the Contract Price.

**2.2.6 Safety Reporting**

**2.2.6.1 Weekly First Aid Logs** - This log should be delivered to the City three (3) days after the weekly reporting period.

**2.2.6.2 Accident and Injury Reports** - This report should be delivered within twenty-four (24) hours of the injury or accident.

**2.2.7 City Safety Deficiency Report** - The Design/Builder is required to respond to this report within two working days explaining his corrective action and proposed schedule for this action.

2.2.8 The Contractor shall meet the detailed security and safety requirements of the Contract Documents.

**2.3 EMERGENCY** - In emergencies affecting the safety or protection of persons or the WORK or property at or adjacent to the site, the Design/Builder, without special instruction or authorization from the City, is obligated to act to prevent threatened damage, injury or loss. The Design/Builder shall give the City prompt written notice if the Design/Builder believes that any significant changes in the WORK have resulted because of the action taken in response to an emergency. If it is determined by the City that a change is required, a change shall be authorized by Change Order as set forth in Article 6 of the Agreement.

**3.0 Dispute** - If after receipt of such special written notice Design/Builder does not agree to resume work based on a reasonable belief it is unsafe, or does not agree to resume work under such special conditions, then City may order such portion of the work that is in connection with such hazardous condition or in such affected area to be deleted from the work. The City may have such deleted portion of the work performed by the City's own forces or others in accordance with Article 3.2 of the Agreement. If the City and the Design/Builder cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of work stoppage or of deleting such portion of the work, then either party may make a claim as provided in Article 11 of the Agreement.

**4.0 OWNER Hold Harmless** - To the fullest extent permitted by Laws and Regulations, the City shall indemnify and hold harmless the Design/Builder, Subconsultants and Subcontractors and the officers, directors, employees, agents, other consultants and subcontractors of each and any of them from and against all claims, costs, losses and damages arising out of or resulting from such hazardous condition, provided that any such claim, cost, loss or damage is attributable to bodily injury, sickness, disease or death, or to the destruction of tangible property and provided further that any such claim, cost loss, or damage is not caused by the consequences of that person's or entity's own negligence.

**EXHIBIT O**

**PROCEDURES FOR REVIEW OF DESIGN MATERIALS**

The review process for submitted materials will be as follows unless indicated differently in Exhibit P:

Unless the City gives Bergelectric Corporation prior notice, the City will respond to Bergelectrics submittals or re-submittals within twenty two (22) working days of their receipt by the City. Within ten (10) working days of receipt of the City's comments, Bergelectrcic. will resolve and/or discuss with the City any outstanding issues as a result of the City's comments. Unless agreed with the City in advance, Bergelectric will submit any required revised or final submittals within ten (10) working days of the resolution of the submittal issues.

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**EXHIBIT P****SCOPE OF WORK**

The Scope of Work under this contract includes all work, materials, equipment, and labor, but is not necessarily limited to, the following:

1. Construction of new two story building at Pump Station 2
2. Furnish and install electrical switchgears, unit substations, motor starters, MCCs, distribution and lighting panels, standby generator, and other equipment per Specifications and Contract Drawings.
3. Furnish and install all electrical conduit, wiring, cables and appurtenances as per Specifications and Contract Drawings.
4. Coordinate with Electric Utility and provide temporary standby power as necessary for successful implementation of the various phases of the project without interruption of the pump station operation.
5. Integrate new switchgear auto throwover control system with Pump Station 2 existing DCS system per specification and contract drawings.

The Design/Builder shall provide management, obtain all permits, design drawings, shop drawings, documents, labor, materials, supplies, parts (to include system components), transportation, plant supervision, testing and equipment needed to complete the Work.

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000317

EXHIBIT Q

SUPPLEMENTARY GENERAL CONDITIONS

FOR

DESIGN/BUILD SERVICES

BETWEEN

**BERGELECTRIC CORPORATION**

AND THE

**ENGINEERING AND CAPITAL PROJECTS DEPARTMENT**

OF THE

CITY OF SAN DIEGO

FOR THE

**PUMP STATION 1 AND PUMP STATION 2 ELECTRICAL UPGRADE AND  
NEW BUILDING AT PUMP STATION 2 PROJECT**



**GENERAL**

These Supplementary General Conditions make additions, deletions, or revisions to the Agreement as indicated herein. All provisions which are not so added, deleted, or revised remain in full force and effect. Terms used in these Supplementary General Conditions which are defined in the Agreement have the meanings assigned to them in the Agreement.

**SGC -1        DEFINITIONS**

**SGC - 1.48 General Requirements**

SGC- 1.48.1 The General Requirements are those identified in Division 1 of the Technical Specifications.

**SGC - 2.14    SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

ADD the following:

SGC - 2.14.2.2.1 DESIGN SUBMITTALS, SHOP DRAWINGS, PRODUCT DATA AND SAMPLES - In the event that the City elects to review any such Design Submittals, Shop Drawings, Product Data, Samples and similar submittals, the procedures for review are outlined in Exhibit 'O'.

**SGC 2.7        WARRANTY**

ADD the following:

**SGC - 2.7.2 One Year Warranty Period** - The Warranty Period shall commence when the Certificate of Substantial Completion is issued, at Notice of Beneficial Occupancy, or at Notice of Partial Utilization of the work to be warranted has been issued, or a later date if so specified in the Contract, or mutually agreed to, and extend until one (1) year after that date or whatever longer period may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee or specific provision of the Contract Documents.

ADD the following:

**2.20 Water Pollution Control.** The Design/Builder shall comply with the requirements outlined in Exhibit "M" Water Pollution Control.

ADD the following:

**2.21 Sewage Spill Prevention and Response Plan**

**SEWAGE SPILL PREVENTION AND RESPONSE PLAN:**

Prior to the start of construction, the Contractor shall develop and submit to Engineer, for review and approval, a written Sewage Spill Response Plan. The Contractor shall observe and comply with the City's policy of zero spills. The Sewage Spill Response Plan shall be developed to respond to any construction related sewage spill(s). This plan shall include but not limited to:

- A. Identifying all nearby environmentally-sensitive areas such as waterways, channels, catch basins, canyons, wildlife habitat, and entrances to existing underground storm drains.
- B. Making arrangements for an emergency response unit, stationed at or near the job site, comprised of emergency response equipment and trained personnel to be immediately dispatched in the event of a sewage spill(s).
- C. Developing an emergency notification procedure, which includes an emergency response team with telephone numbers and arrangements for backup personnel and equipment. The emergency response unit shall be able to dispatch to the site 24 hours a day 7 days a week including weekends and holidays. The Contractor shall designate primary and secondary representatives, their respective phone numbers, pager numbers, and mobile phone numbers. These Contractor's representatives shall be accessible and available at all times to respond immediately to any sewer spill event.
- D. Identifying any property owners who may be affected including but not limited to City Departments.

At the preconstruction meeting the Contractor will be provided with a list of city representatives to contact in case of a sewage spill(s). In case of a sewage spill(s), the Contractor shall immediately call the 24 hours emergency notification number at (619) 515-3525 and the City's Emergency Response Team (ERT) at (619) 232-2237 (pager) and/or (619) 980-0657 (cell). The Contractor shall not drive heavy equipment off-road or outside the limits of work until the ERT member arrives, and shall work to control the spill and take all appropriate steps to contain it in accordance with the Sewage Spill Response Plan and Article 6-29, Flow Diversion Plan. The Contractor shall immediately notify the City representatives of the spill and shall report project name, location, Contractor name, Project Engineer and Resident Engineer names. The Contractor shall, within three working days from the occurrence of the spill, submit to the Engineer a written report describing the following information related to the spill: the location; the nature and estimated volume; the date and time; the duration; the cause; the type of remedial and/or clean up measures taken (including erosion control measures) and the date and time of implementation; the corrective and/or preventive actions taken to avoid further spills; equipment used in spill response; and the environmentally-sensitive habitat such as a water body, if any, impacted and results of any necessary monitoring. The Contractor shall also provide a list of who from the City was notified, date and time of notification, date and time Contractor was notified of the spill, date and time Contractor arrived on site.

The Engineer may institute further corrective actions, as deemed necessary, to fully comply with existing laws, ordinances, codes, order or other pertinent regulations. The Contractor shall be responsible for all costs incurred for the corrective actions including mitigation measures (habitat restoration, etc.) and obtaining after-the-fact permits if necessary, in environmentally sensitive areas. These permits include but are not limited to those from the City Planning and Development Review Department, California

Coastal Commission, U.S Army Corps of Engineers and the California Department of Fish and Game. Conditions of any after-the-fact permits shall be reviewed and approved by the Owner.

It shall be the Contractor's responsibility to assure that all field forces, including subcontractors, know and obey all safety and emergency procedures, including the Spill Response Plan applicable to the work, to be maintained and followed at the job site. If in or adjacent to an environmentally sensitive area, such as canyon, stream, or lagoon, impacts must be minimized. Crews must be aware at the start of the job of any sensitive environmental habitats, breeding season restrictions, permit conditions, California Environmental Quality Act conditions, and limits of work.

The Contractor shall take extreme care to prevent spills when working on sewer lines such as when making temporary connection and when connecting new lines into the sewer system. The Contractor shall not trap debris and discharge rock or debris downstream. Avoidance of streams is paramount unless authorized via permits. Without the appropriate permits, modification of stream beds and banks may be a violation federal, state, or local laws.

The Contractor shall defend, indemnify, protect, and hold harmless the City, its agents, officers, and employees, from and against all claims asserted, or liability established for damages or injuries to any person or property resulting from any sewage spill caused or claimed to be caused by the Contractor's action or failure to take measures to prevent a spill. The Contractor shall also be responsible for payment of any fines assessed against the City for such sewage spills.

*The Contractor's duty to indemnify and hold harmless shall not include any claims or liability arising from the established active or sole negligence or willful misconduct of the City, its agents, officers or employees.*

The Contractor shall obtain and maintain an additional insurance coverage for Pollution Liability with its limits and requirements as set forth in the Supplementary General Conditions Article SGC-5.3.2 Contractors Pollution Liability. The limits and requirements for Pollution Liability shall be in an amount sufficient to cover potential losses from sudden and accidental pollution. Unless otherwise provided for in the Bid Proposal, all costs associated with the requirements for "Sewage Spill Response Plan," including additional insurance, shall be included in the prices for other related bid items.

ADD the following

## **2.22 FLOW DIVERSION PLAN:**

The Contractor shall submit to the Engineer for approval, a wastewater flow diversion plan at least fifteen (15) working days prior to implementation of flow diversion in compliance with the City's policy of "ZERO SPILLS." The diversion plan shall indicate the sequence of diversion operations, and all other operations the Contractor will establish to maintain wastewater service during the construction period. The diversion plan shall include an emergency response plan indicating the procedures, equipment, and activities that will be implemented in the event of an emergency shutdown or failure of the flow diversion equipment used for construction. The Contractor shall be responsible for implementation of the emergency plan in accordance with Article 6-28 "Sewage Spill Response Plan". The Contractor's Wastewater Flow Diversion Plan shall be reviewed and approved by the Wastewater

Collection Division before flow can be diverted. No deviation from the approved Wastewater Flow Diversion Plan will be allowed without prior approval from the Resident Engineer.

The Contractor shall observe and comply with all Federal, State, and local laws, ordinances, codes, orders, and regulations which in any manner affect the conduct of the work, specifically as it relates to sewage spills. The Contractor shall be fully responsible for preventing sewage spill(s), containing any sewage spill(s), recovery and legal disposal of any spilled sewage, any fines, penalties, claims and liability arising from negligently causing a sewage spill(s), and any violation of any law, ordinance, code, order, or regulation as a result of the spill(s).

The Contractor shall exercise care not to damage existing public and private improvements, interrupt existing services and/or facility operations which may cause a sewage spill(s). Any reasonably anticipated utility and/or improvement which is damaged by the Contractor shall be immediately repaired at the expense of the Contractor. In the event that the Contractor damages an existing utility or interrupts an existing service, which causes a sewage spill(s), the Contractor shall immediately call the emergency number at (619) 515-3525 .

The Contractor shall exercise care not to damage any sensitive habitats or historic resources unless authorized via discretionary permits issued by the City, Army Corps of Engineers, California Department of Fish and Game, or other regulatory agencies; and Mitigation, Monitoring and Reporting Program approved by the City of San Diego.

The Contractor shall provide all facilities, labor, power, and appurtenances necessary to divert wastewater flows as necessary to allow proper installation of the pipeline and/or manhole linings.

The Contractor shall submit as part of their Flow Diversion Plan their monitoring procedure and frequency and shall continuously monitor the flow levels downstream and upstream of the flow diversion to detect any possible failure that may cause a sewage backup and spill(s). The Contractor shall maintain a log of the monitoring and provide daily copies to the Resident Engineer in a manner acceptable to the Engineer.

The Contractor shall inspect and maintain the diversion system daily, including the back-up system. The Contractor shall submit with their bypass plan their maintenance procedures and frequency. The Contractor shall maintain a log of all inspection, maintenance and repair records, and provide copies to the Resident Engineer upon request in a manner acceptable to the Engineer.

The Contractor shall size the flow diversion system to handle the peak flow and shall include a 100% backup in the flow diversion system. The Contractor shall provide temporary means to maintain and handle the sewage flow in the existing system as required to complete the necessary construction. The Contractor shall utilize the flow diversion system to mitigate any additional wet weather flows, perform the necessary maintenance and repairs on the flow diversion system, and exercise and ensure the operation of the backup system. Each pump, including the backup pumps, shall be a complete unit with its own suction and discharge piping. The Contractor shall operate the backup flow diversion system for a minimum of 25% of the total diversion time on a weekly basis. The backup flow diversion system shall be fully installed, operational, and ready for immediate use. The diversion system shall be hydraulically tested with clean water prior to wastewater flow diversion. The Contractor shall

demonstrate to the satisfaction of the Engineer that both the primary and backup flow diversion systems are fully functional and adequate, and shall certify the same, in writing, to the Engineer in a manner acceptable to the Engineer.

The Contractor shall provide one dedicated fuel tank for every single pump/generator, if fuel/generator driven pumps are used. The Contractor shall provide an emergency standby power generator, if electric power driven pumps are used. The Contractor shall provide a fuel level indicator outside each fuel tank.

The Contractor shall continuously (while in use) monitor the fuel level in the tanks and ensure that the fuel level does not drop below a level equivalent of two hours of continuous flow diversion system operation. The Contractor shall take the necessary measures to ensure the fuel supply is protected against contamination. This includes but is not limited to fuel line water traps, fuel line filters, and protecting fuel stores from precipitation. The Contractor shall also monitor all hoses and repair leaks immediately.

In addition to the requirements above, the flow diversion shall have the following general minimum requirements:

1. Installation of a temporary telemetry or SCADA System. The system should at a minimum be capable of monitoring Hi Level, Lo Level, and SDG&E power failure.
2. Provide and install temporary pumps as needed. Also provide an additional spare unit.
3. Provide and install pump controller panel.
4. Provide a source of power to the temporary pumps and the telemetry system. In addition, the install of all cords/wires between the telemetry and the pump controller.
5. Provide and install a telephone line for the telemetry, if necessary.
6. Provide and install floats for pump start/stop levels.
7. Plug all sewer lines as necessary.
8. Provide and install necessary discharge piping and highlines.
9. Provide spare hoses at site.
10. Provide an emergency generator at the site.
11. Provide detailed drawings showing the diversion flow plan.
12. The Contractor shall coordinate with the WWCD's staff during the installation of the flow diversion plan. The Contractor shall not be allowed to implement the bypass pumping without WWCD review and approval of the Wastewater Flow Diversion Plan.

Unless otherwise provided for in the Bid Proposal, full compensation for the Wastewater Flow Diversion Plan, its implementation including but not limited to labor, facilities, equipments, power, appurtenances and incidental, shall be included in the price bid per lineal foot of sewer main and no additional compensation shall be made.

#### **SGC - 4      TIME**

ADD the following:

**SGC - 4.1.1 TIME OF COMPLETION** - The WORK must be completed within two years after the commencement date stated in the Notice to Proceed. The Design/Builder understands and agrees to the importance of achieving completion within the Contract Time as set forth in the Schedule,

**SGC 4.5 CONSTRUCTION ACTIVITIES**

ADD the following:

**SGC - 4.5.1 CONSTRUCTION ACTIVITIES** - The Design/Builder shall submit to the City for review a BI-WEEKLY updated detailed construction schedule that is consistent with the Schedule.

**SGC - 4.8 LIQUIDATED DAMAGES****SGC - 4.8.2 AMOUNT OF LIQUIDATED DAMAGES**

ADD the following:

**SGC - 4.8.2.1 LIQUIDATED DAMAGES** - In the event the Design/Builder fails to achieve Substantial Completion of the Project on or before **October 30, 2010 or 2 years from issuance of Notice to Proceed,** for any reason other than Excusable Delays the Design/Builder shall pay to the City Liquidated Damages in the amount of **ONE THOUSAND FIVE HUNDRED DOLLARS (\$1500)** per Calender Day for not meeting the SUBSTANTIAL COMPLETION date.

**SGC - 4.8.3 ACTUAL DAMAGES FOR LATE FINAL COMPLETION** - Damages incurred by the City as a result of Design/Builder's delays in reaching Final Completion or by its City's Separate Contractors, shall be recoverable by the City on the basis of actual damages which shall be limited to a Not To Exceed amount of **FIVE HUNDRED DOLLARS (\$ 500)** per Calender Day for not meeting the FINAL COMPLETION date.

**SGC - 5 PAYMENT AND COMPLETION**

**SGC - 5.12.1 SUBSTANTIAL COMPLETION** - Substantial Completion will occur only after the satisfactory completion of a minimum of fourteen (14) day start-up and testing period, performed by the Design/Builder and certified by the City.

**SGC - 9.1.4 PERFORMANCE AND OTHER BOND AMOUNTS**

The CONTRACTOR shall furnish a satisfactory Performance Bond in the amount of 100 percent of the Contract Price and a satisfactory Payment Bond in the amount of 100 percent of the Contract Price.

**SGC-9.3 INSURANCE**

**SGC-9.3.2 Contractors Pollution Liability Insurance** - Contractor shall procure and maintain at its expense or cause its subcontractor to procure and maintain, Contractors Pollution Liability Insurance including contractual liability coverage to cover liability arising out of cleanup, removal, storage, or handling of hazardous or toxic chemicals, materials, substances, or any other pollutants

by the Contractor or any subcontractor in an amount not less than \$2,000,000 limit for bodily injury and property damage. All costs of defense shall be outside the limits of the policy. Any such insurance provided by a subcontractor must be approved separately in writing by the City. Approval of a substitution of a subcontractor's insurance shall require a certification by the Contractor that all activities for which Contractors Pollution Liability Insurance will provide coverage will be performed exclusively by the subcontractor providing the insurance. The deductible shall not exceed \$25,000 per claim. Contractual liability shall include coverage of tort liability of another party to pay for bodily injury or property damage to a third person or organization. There shall be no endorsement or modification of the coverage limiting the scope of coverage for either "insured vs. insured" claims or contractual liability. Occurrence based policies shall be procured before the Work commences and shall be maintained for the duration of this Contract. Claims Made policies shall be procured before the Work commences, shall be maintained for the duration of this Contract, and shall include a 12 month extended Claims Discovery Period applicable to this Contract or the existing policy or policies must continue to be maintained for 12 months after the completion of the Work under the Contract without advancing the retroactive date. Except as provided for under California law, the policy or policies must provide that the City is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies.

**SGC-9.3.3 Contractors Hazardous Transporters Pollution Liability Insurance** - Contractor shall provide at its expense or cause its subcontractor to provide Contractors Hazardous Transporters Pollution Liability Insurance including contractual liability coverage to cover liability arising out of transportation of hazardous or toxic, materials, substances, or any other pollutants by the Contractor or any subcontractor in an amount not less than \$2,000,000 limit per occurrence/aggregate for bodily injury and property damage. All costs of defense shall be outside the limits of the policy. The deductible shall not exceed \$25,000 per claim. Any such insurance provided by a subcontractor must be approved separately in writing by the City. Approval of the substitution of a subcontractor's insurance shall require a certification by the Contractor that all activities for which Contractors Hazardous Transporters Pollution Liability Insurance will provide coverage will be performed exclusively by the subcontractor providing the insurance. Contractual liability shall include coverage of tort liability of another party to pay for bodily injury or property damage to a third person or organization. There shall be no endorsement or modification of the coverage limiting the scope of coverage for either "insured vs. insured" claims or contractual liability. Occurrence based policies shall be procured before the Work commences and shall be maintained for the duration of this Contract. Claims Made policies shall be procured before the Work commences, shall be maintained for the duration of this Contract, and shall include a 12 month extended Claims Discovery Period applicable to this Contract or the existing policy or policies must continue to be maintained for 12 months after the completion of the Work under this Contract without advancing the retroactive date. Except as provided for under California law, the policy or policies must provide that the City is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies.

**SGC-9.3.4 Contractors Builders Risk Property Insurance** - Contractor shall provide at its expense, and maintain until Final Completion and Acceptance of the Work, a Special Form Builders Risk Policy or Policies. This insurance shall be in an amount equal to the replacement cost of the completed Work (without deduction for depreciation) including the cost of excavations, grading, and filling. The policy or policies limits shall be 100% of this Contract value of the Work plus 15% to cover administrative

costs, design costs, and the costs of inspections and construction management.

Insured property shall include material or portions of the Work located away from the project site but intended for use at the project site, and shall also cover material or portions of the Work in transit. The policy or policies shall include as insured property scaffolding, falsework, and temporary buildings located at the project site. The policy or policies shall cover the cost of removing debris, including demolition.

The policy or policies shall provide that all proceeds thereunder shall be payable to the City as Trustee for the insureds, and shall name City, Contractor, subcontractors, and suppliers of all tiers as named insureds. City as Trustee shall collect, adjust, and receive all monies which may become due and payable under the policy or policies, may compromise any and all claims thereunder, and shall apply the proceeds of such insurance to the repair, reconstruction, or replacement of the Work.

Any deductible applicable to the insurance shall be identified in the policy or policies documents and responsibility for paying the part of any loss not covered because of the application of such deductibles shall be apportioned among the parties except for the City as follows: if there is more than one claimant for a single occurrence, then each claimant shall pay a pro-rata share of the per occurrence deductible based upon the percentage of their paid claim to the total paid for all insureds. The City shall be entitled to 100 percent of its loss. Any portion of that loss not covered because of a deductible shall be paid to the City by the Contractor at the same time the proceeds of the insurance are paid to the City as trustee.

Any insured, other than City, making claim to which a deductible applies shall be responsible for 100 percent of the loss not insured because of the deductible. Except as provided for under California law, the policy or policies must provide that the City is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies.

### **SGC-9.3.6 Contractors Pollution Liability Insurance Endorsements**

**SGC-9.3.6.1 Additional Insured** - The policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents, and representatives, with respect to liability arising out of: (a) Ongoing operations performed by you or on your behalf, (b) Your products, (c) Your work, including but not limited to your completed operations performed by you or on your behalf, or (d) premises owned, leased, controlled, or used by you; *Except* that in connection with, collateral to, or affecting any construction contract to which the provisions of subdivision (b) of Section 2782 of the California Civil Code apply, this endorsement shall not provide any duty of indemnity coverage for the active negligence of the City of San Diego and its respective elected officials, officers, employees, agents, and representatives in any case where an agreement to indemnify the City of San Diego and its respective elected officials, officers, employees, agents, and representatives would be invalid under subdivision (b) of Section 2782 of the California Civil Code. In any case where a claim or loss encompasses the negligence of the Insured and the active negligence of the City of San Diego and its respective elected officials, officers, employees, agents, and representatives that is not covered because of California Insurance Code Section 11580.04, the insurer's obligation to the City of San Diego and its respective elected officials, officers, employees, agents, and representatives shall be limited to obligations permitted by California Insurance Code Section 11580.04.



**SGC-9.3.6.2 Primary And Non-Contributory Coverage** - The policy or policies must be endorsed to provide that the insurance afforded by the Contractors Pollution Liability Insurance policy or policies is primary to any insurance or self-insurance of the City of San Diego and its elected officials, officers, employees, agents and representatives with respect to operations including the completed operations of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents and representatives shall be in excess of Contractor's insurance and shall not contribute to it.

**SGC-9.3.6.3 Severability of Interest** - Contractors Pollution Liability Insurance, the policy or policies must provide that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage

### **SGC-9.3.7 Contractors Hazardous Transporters Pollution Liability Insurance Endorsements**

**SGC-9.3.7.1 Additional Insured** - The policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents, and representatives, with respect to liability arising out of: (a) Ongoing operations performed by you or on your behalf, (b) Your products, (c) Your work, including but not limited to your completed operations performed by you or on your behalf, or (d) premises owned, leased, controlled, or used by you; *Except* that in connection with, collateral to, or affecting any construction contract to which the provisions of subdivision (b) of Section 2782 of the California Civil Code apply, this endorsement shall not provide any duty of indemnity coverage for the active negligence of the City of San Diego and its respective elected officials, officers, employees, agents, and representatives in any case where an agreement to indemnify the City of San Diego and its respective elected officials, officers, employees, agents, and representatives would be invalid under subdivision (b) of Section 2782 of the California Civil Code. In any case where a claim or loss encompasses the negligence of the Insured and the active negligence of the City of San Diego and its respective elected officials, officers, employees, agents, and representatives that is not covered because of California Insurance Code Section 11580.04, the insurer's obligation to the City of San Diego and its respective elected officials, officers, employees, agents, and representatives shall be limited to obligations permitted by California Insurance Code Section 11580.04.

**SGC-9.3.7.2 Primary And Non-Contributory Coverage** - The policy or policies must be endorsed to provide that the insurance afforded by the Contractors Pollution Liability Insurance policy or policies is primary to any insurance or self-insurance of the City of San Diego and its elected officials, officers, employees, agents and representatives with respect to operations including the completed operations of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents and representatives shall be in excess of Contractor's insurance and shall not contribute to it.

**SGC-9.3.7.3 Severability of Interest** - For Contractors Hazardous Transporters Pollution Liability Insurance, the policy or policies must provide that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

### **SGC-9.3.8 Builders Risk Endorsements**

**SGC-9.3.8.1 Waiver Of Subrogation** - The policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against the City, and its respective elected officials, officers, employees, agents, and representatives for losses paid under the terms of the policy or policies and which arise from work performed by the Named Insured for the City.

**SGC-9.3.9 Builders Risk – Partial Utilization** - If the City desires to occupy or use a portion or portions of the Work prior to Substantial Completion in accordance with this Contract, City shall notify Contractor and Contractor shall immediately notify its Builder's Risk insurer and obtain an endorsement that the policy or policies shall not be cancelled or lapse on account of any such partial use or occupancy. Contractor shall obtain the endorsement prior to City's occupation and use.

END OF SUPPLEMENTARY GENERAL CONDITIONS